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DEPARTMENT OF ENERGY

10 CFR Part 770

RIN 1901–AA82

Transfer of Real Property at Defense Nuclear Facilities for Economic Development

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting the interim final rule published on February 29, 2000, 65 FR 10685, as final, with changes. The final rule establishes a process for transferring unneeded real property at DOE defense nuclear facilities, for the purpose of promoting economic development, and prescribes the process by which the Secretary of Energy (or delegate) can grant discretionary indemnification.

DATES: *Effective Date:* This rule is effective on December 13, 2013.

FOR FURTHER INFORMATION CONTACT: Carmelo Melendez, Senior Real Property Officer, Office of Property Management, MA–65, 1000 Independence Avenue SW., Washington, DC 20585; *Carmelo.Melendez@hq.doe.gov;* 202–586–4502.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE) published an interim final rule and opportunity for public comment on February 29, 2000, 65 FR 10685, and DOE received comments on the rule. After the issuance of the rule, there were two separate legislative amendments to the underlying statutory authority, and one of the legislative amendments required revising the regulation. Today DOE is adopting the interim final rule as final, with revisions to conform with the legislative amendment, and to provide clarification.

Section 3158 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, directed the Department to prescribe regulations for the transfer, by sale or lease, of real property at DOE defense nuclear facilities for the purpose of permitting the economic development of the property (amended and redesignated at 50 U.S.C. 2811). 50 U.S.C. 2811(b) also provides that the Secretary of Energy may hold harmless and indemnify a person or entity against any claim to person or property that results from the release or threatened release of a hazardous substance or pollutant or contaminant resulting from DOE activities at the former defense nuclear facility on which the real property is located.

This final rule has been approved by the Office of the Secretary of Energy.

II. Comments on the Interim Final Rule

DOE invited public comment on the interim final rule, and received written comments from several interested organizations as well as individuals interested in the transfer of DOE real property at defense nuclear facilities for economic development. Most of the comments expressed support for the rule. A number of issues raised in the comments were resolved by the passage of statutory amendments that clarified that indemnification will apply to future transferees; these revisions are reflected in the revised regulation. DOE has adopted the comment to clarify that ''local government'' will be notified regarding any unneeded property. In appropriate circumstances, DOE will also notify Tribal nations regarding unneeded property.

III. Discussion of Amendments

In today's final rule DOE is revising certain sections of the interim rule to reflect statutory amendments that were made after February 29, 2000. None of the regulatory changes in this notice of final rulemaking alter substantive rights or obligations under current law.

Section 506 of the Consolidated Appropriations Resolution, 2003, Title V (Pub. L. 108–7) (February 20, 2003) amended section 3158, by clarifying that if indemnification is provided by DOE, such indemnification will also be provided to ''any successor, assignee, transferee, lender or lessee'' of the entity that initially acquires ownership or control. Accordingly, DOE added a new section 770.9(e) to clarify that any indemnification provided by DOE to an entity is transferable to a successor entity. Later legislation further clarified that the section 506 amendment was effective for any transfers as of, the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998, which was November 18, 1997. (Section 504 of the Energy and Water Development Appropriation Act, 2004, Title V (Pub. L. 108–137) (December 1, 2003)). No regulatory amendment is necessary for the legislative change under the Energy and Water Development Appropriation Act, 2004

DOE added the phrase ''closed or downsized'' before the term ''defense nuclear facilities'' in sections 770.1 and 770.2 to clarify that this rule applies only to unneeded real property assets. DOE added the phrase ''and for facilitating local reuse or redevelopment'' in section 770.2(b), to emphasize that the purpose of the transfers is to enable reuse or redevelopment of the transferred property.

We revised the definitions in 770.4 to be consistent with terminology used in current DOE directives. We added language in section 770.5 to clarify that local governments will be advised regarding the availability of real property. In section 770.7 the revisions clarify the conditions regarding economic development and reuse of the DOE properties.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial

number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

Today's final rule concerning the sale or lease of real property at defense nuclear facilities is not subject to the Regulatory Flexibility Act because neither the Administrative Procedure Act (5 U.S.C. 553(a)(2)), nor any other law requires DOE to propose the rule for public comment. Consequently, this rulemaking is exempt from the requirements of the Regulatory Flexibility Act.

C. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969. 42 U.S.C. 4321 *et seq.* This interim final rule establishes procedures for real property transfers for economic development. Because the rule is procedural, it is covered by the Categorical Exclusion in paragraph A6 of Appendix A to Subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required. Individual proposals for the transfer of property are subject to appropriate NEPA review. 10 CFR 770.3(b).

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law; this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. DOE has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guideline issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use

should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Applicability of Executive Order 13175

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000) and implementing guidance from the Office of Management and Budget (M–10–33, July 30, 2010) require consultation with tribal officials in the development of regulations in two particular circumstances. Specifically, consultation is required if a regulation imposes unfunded mandates on tribes or preempts tribal law. In such cases, when an agency submits a draft final regulation to OMB for review under Executive Order 12866, the agency must include a ''tribal summary impact statement'' in a ''separately identified portion of the preamble to the regulation''. The OMB guidance further details the contents of the tribal summary impact statement. DOE has determined that this regulation neither imposes an unfunded mandate on tribes nor preempts tribal law. Therefore, tribal consultation was not conducted prior to issuance of the rule.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 770

Federal buildings and facilities.

Issued in Washington, DC on November 1, 2013.

Ingrid Kolb,

Director, Office of Management.

For the reason set forth in the preamble, the interim rule which was published at 65 FR 10685 on February 29, 2000 is adopted as a final rule with the following changes:

PART 770—TRANSFER OF REAL PROPERTY AT DEFENSE NUCLEAR FACILITIES FOR ECONOMIC DEVELOPMENT

■ 1. The authority citation for part 770 is revised to read as follows:

Authority: 50 U.S.C. 2811.

§ 770.1 [Amended]

■ 2. Section 770.1(a) is amended by adding ''closed or downsized'' after ''real property at''.

■ 3. Section 770.2 is amended by:

■ a. Adding, in paragraph (a), ''closed or downsized'' after ''sale or lease at''; and

■ b. Revising paragraph (b) to read as follows:

§ 770.2 What real property does this part cover?

* * * * *

(b) DOE may transfer, by lease only, improvements at defense nuclear facilities on land withdrawn from the public domain, that are unneeded, temporarily underutilized, or underutilized, for the purpose of permitting economic development and for facilitating local reuse or redevelopment.

■ 4. Section 770.4 is amended by:

■ a. Adding in the definition of ''*Community Reuse Organization or CRO*'', the words ''that is recognized by DOE and'' after ''non-governmental organization'', and removing ''and that has the authority to enter into and fufill the obligations of a DOE financial assistance agreement.''

■ b. Adding in the definition of ''*Economic Development,*'' the words ''or which furthers reuse or redevelopment,'' after ''surrounding region(s)'';

■ c. Removing the definition of ''*Excess Real Property;*''

■ d. Adding, in the definition of ''*Underutilized Real Property or Temporarily Underutilized Real Property*'' after the first sentence, ''Underutilized property is available by lease only.''

■ e. Adding in alphabetical order the definition of ''*Unneeded Real Property*'' to read as follows:

§ 770.4 What definitions are used in this part?

* * * * *

Unneeded Real Property means any property under DOE control that the Field Office, cognizant program, or the Secretary of Energy have determined, according to applicable procedures, to be no longer needed for the purposes of conducting DOE business.

§ 770.5 [Amended]

■ 5. Section 770.5(a) is amended by adding in the first sentence '', local government,'' and ''Tribal nations,'' after ''Community Reuse Organizations''.

■ 6. Section 770.7 is amended by:

■ a. Revising paragraphs (a)(1)(ii) and (iii);

■ b. Removing in paragraph (b) ''Within 90 days after receipt of a'' and adding ''After review of the'' in its place.

■ c. Removing paragraph (d).

The revisions read as follows:

§ 770.7 What procedures are to be used to transfer real property at defense nuclear facilities for economic development?

(a) * * *

(1) * * *

(ii) The intended use and duration of use of the real property, including potential users and an indication that these users are interested in participating in the economic development of the property;

(iii) A description of the economic development that would be furthered by the transfer (*e.g.,* jobs to be created or retained, improvements to be made) or what reuse or reutilization would be accomplished by means of a description of the business to be created (direct and indirect economic benefits that will result due to the proposed transfer);

* * * * *

■ 7. Section 770.9 is amended by adding paragraph (e) to read as follows:

§ 770.9 What conditions apply to DOE indemnification of claims against a person or entity based on the release or threatened release of a hazardous substance or pollutant or contaminant attributable to DOE?

* * * * *

(e) Any indemnification provided will apply to any successor, assignee, transferee, lender or lessee of the original entity that acquires ownership or control.

[FR Doc. 2013–27117 Filed 11–12–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number 100318153–3914–03]

RIN 0607–AA50

Foreign Trade Regulations (FTR): Mandatory Automated Export System Filing for All Shipments Requiring Shipper's Export Declaration Information: Substantive Changes and Corrections

AGENCY: Bureau of the Census, Commerce Department.

ACTION: Final rule; delay of effective date and announcement of OMB approval of new information collection requirements.

SUMMARY: The Bureau of the Census (Census Bureau) is announcing the delay of the effective date of the final rule published March 14, 2013, scheduled to take effect on January 8, 2014, until April 5, 2014. This rule also announces the approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of modifications to an existing information collection and the collection of two new data elements in the Automated Export System (AES) under control number 0607–0152.

DATES: The effective date of the final rule published on March 14, 2013, (78 FR 16366) is delayed until April 5, 2014. OMB approved the collection of two new data elements through the AES under control number 0607–0152 on May 6, 2013.

ADDRESSES: Direct all written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Nick Orsini, Chief, Foreign Trade Division, U.S. Census Bureau, Room 6K032, Washington, DC 20233–6010, by phone (301) 763–6959, by fax (301) 763–6638, or by email <*nick.orsini@census.gov*>.

SUPPLEMENTARY INFORMATION: The AES is the primary instrument used for collecting export trade data, which is used by the Census Bureau for statistical purposes only and by other federal government agencies for purposes of enforcing U.S. export laws and regulations. On March 14, 2013, the Census Bureau published a final rule amending its regulations to require new export reporting requirements. See 78 FR 16366. In particular, the rule implemented a requirement to report shipments of used self-propelled vehicles and temporary exports through the AES or through AES*Direct.* In addition, the rule required the reporting of two new data elements, license value (15 CFR 30.6(b)(15)) and ultimate consignee type (15 CFR 30.6(a)(28)), and modified the postdeparture filing requirements. These changes are being programmed in the Automated Commercial Environment for Exports. However, the functionality to support the revisions addressed in the FTR final rule published March 14, 2013, will not be completed by the original effective date of January 8, 2014. Therefore, the Census Bureau and U.S. Customs and Border Protection agreed to delay the effective date for this rule until April 5, 2014. As a result of this rule, the trade community does not have to comply with the requirements implemented by the March 14, 2013, final rule until April 5, 2014.

This rule also announces OMB's approval of amendments to the information collection requirements previously approved under OMB control number 0607–0152, and the implementation of two new data elements. The March 14, 2013, final rule implemented the mandatory filing of export information through the AES or through AES*Direct* for all shipments of used self-propelled vehicles and for temporary exports. In addition, the final rule outlined the reporting of two additional fields, license value (15 CFR 30.6(b)(15)) and ultimate consignee type (15 CFR 30.6(a)(28)), and modified the postdeparture filing requirements. OMB approved these information collection requirements on May 6, 2013.

Executive Orders

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

It has been determined that this rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Dated: November 6, 2013.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2013–27122 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

[K00103 12/13 A3A10; 134D0102DR–DS5A300000 DR.5A311.IA000113, Docket ID: BIA–2013–0005]

RIN 1076–AF15

Land Acquisitions: Appeals of Land Acquisition Decisions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises a section of regulations governing decisions by the Secretary to approve or deny applications to acquire land in trust under this part. This rule addresses changes in the applicability of the Quiet Title Act as interpreted by a recent United States Supreme Court decision and broadens and clarifies the notice of decisions to acquire land in trust, including broadening notice of any right to file an administrative appeal.

DATES: This rule is effective on December 13, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Rule
II. Background
III. Explanation of the New Rule
  A. Deleting the 30-Day Waiting Period
  B. Requiring Notification of Known and Unknown Interested Parties of the Decision and Administrative Appeal Rights
  C. Exhaustion of Administrative Remedies
IV. Comments on the Proposed Rule and Responses
V. Procedural Requirements
  A. Regulatory Planning and Review (E.O. 12866 and 13563)
  B. Regulatory Flexibility Act
  C. Small Business Regulatory Enforcement Fairness Act
  D. Unfunded Mandates Reform Act
  E. Takings (E.O. 12630)
  F. Federalism (E.O. 13132)
  G. Civil Justice Reform (E.O. 12988)
  H. Consultation With Indian Tribes (E.O. 13175)
  I. Paperwork Reduction Act
  J. National Environmental Policy Act
  K. Effects on the Energy Supply (E.O. 13211)

I. Executive Summary of Rule

Section 5 of the Indian Reorganization Act (IRA) (25 U.S.C. 465) authorizes the Secretary of the Interior to acquire land in trust for individual Indians and Indian tribes. The Department of the Interior's regulations at 25 CFR part 151 implement this statutory provision of the IRA, as well as other statutes authorizing the acquisition of land in trust. Prior to 1996, the Department announced decisions to take land into trust simultaneously with the action of taking the land into trust. According to then-prevailing court decisions, once the land was taken in trust, judicial review was very limited. Consequently, the Department decided to create a time-limited opportunity for judicial review. In 1996, the Department revised part 151 by procedural rulemaking. In response to *State of South Dakota* v. *U.S. Department of the Interior,* 69 F.3d 878 (8th Cir. 1995), the Department established a procedure to ensure the opportunity for judicial review of administrative decisions to acquire title to lands in trust for Indian tribes and individual Indians. That procedural rule added a paragraph (b) to § 151.12, which established a 30-day waiting period following publication of notice in the **Federal Register** or in a newspaper of

general circulation serving the affected area announcing the final agency determination to take the subject land into trust. Paragraph (b) was intended to provide a brief window of time in which interested parties had the opportunity to seek judicial review under the Administrative Procedure Act (APA) (5 U.S.C. 704) before the Secretary acquired title to land in trust. *See* 61 FR 18082 (Apr. 24, 1996). The Department had determined such a rule was necessary because, at that time, prevailing Federal court decisions found that the law precluded judicial review of the decision after the United States acquired title. *See, e.g., Neighbors for Rational Dev., Inc.* v. *Norton,* 379 F.3d 956 (10th Cir. 2004); *Metro Water Dist. of S. Cal.* v. *United States,* 830 F.2d 139 (9th Cir. 1987); *Florida Dep't of Bus. Regulation* v. *Dep't of the Interior,* 768 F.2d 1248 (11th Cir. 1985).

The legal landscape changed on June 18, 2012, when the Supreme Court issued its decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak,* 132 S. Ct. 2199 (2012) (''*Patchak*''). In that decision, the Supreme Court held that the Quiet Title Act (QTA), 28 U.S.C. 2409a, nor Federal sovereign immunity is a bar to APA challenges to the Secretary's decision to acquire land in trust after the United States acquires title to the property, unless the aggrieved party asserts an ownership interest in the land as the basis for the challenge. Following *Patchak,* the 1996 procedural rule establishing a 30-day waiting period is no longer needed because interested parties may have the opportunity to seek judicial review of the Secretary's decision under the APA even after the Secretary has acquired title to the property.

On May 29, 2013, the Bureau of Indian Affairs (BIA) published a proposed rule that would remove the 30-day waiting period and make other changes to clarify the Department's process for issuing trust acquisition decisions. 78 FR 32214. BIA then extended the original comment deadline of July 29, 2013 to September 3, 2013. *See* 78 FR 49990 (Aug. 16, 2013). Following tribal consultation and analysis of comments on the proposed rule, the BIA is now publishing a final rule. This final rule revises section 151.12 to:

- Provide clarification and transparency to the process for issuing decisions by the Department, whether the decision is made by the Secretary, Assistant Secretary—Indian Affairs (AS–IA), or a Bureau of Indian Affairs (BIA) official;
- Ensure notice of a BIA official decision to acquire land into trust, and the right, if any, to file an administrative appeal of such decision by requiring written notice to all interested parties who have made themselves known in writing to the BIA official, as well as State and local governments having regulatory jurisdiction over the land to be acquired, and expanding notice through newspaper publication; and
- Repeal the 1996 procedural provision and make explicit that parties must exhaust administrative remedies prior to pursuing judicial review for BIA trust acquisitions.

II. Background

Congress enacted the IRA in 1934 to halt and remedy the devastating effects of prior policies of allotment and assimilation and to secure for all Indian tribes a land base on which to engage in economic development and self-determination. During the allotment era, Indian-owned lands diminished drastically. Even today, most tribes lack an adequate tax base to generate government revenues, and others have few opportunities for economic development. Trust acquisition of land provides a number of economic development opportunities for tribes, helps generate revenues for public purposes, and helps protect tribal culture and ways of life (e.g., housing for tribal citizens, energy and natural resource development, protections for subsistence hunting and agriculture).

This Administration has earnestly sought to advance the IRA policy goals of protecting and restoring tribal homelands and promoting tribal self-determination. The Secretary's authority to acquire lands in trust for all Indian tribes, and ability to provide certainty concerning the status of and jurisdiction over Indian lands, reaches the core of the Federal trust responsibility. To carry out the Secretary's delegated authority under the IRA, decisions to acquire land in trust are delegated either to the AS–IA or to a BIA official. The vast majority of trust acquisition decisions are delegated to and issued by BIA officials. Only a small percentage of decisions are reviewed and considered by the AS–IA. These decisions involve extensive public participation and several layers of review by Department officials before issuance.

The existing regulations that apply to all AS–IA and BIA decisions include different means and timelines for challenging decisions depending on whether the decision is issued by the AS–IA or a BIA official. This final rule clarifies these distinctions within the context of trust acquisition decisions.

- If the AS–IA issues the decision under this part, the decision is a ''final agency determination,'' and the decision is final for the Department. *See* 25 CFR 2.6(c). A party may then seek judicial review of this decision under the APA.
- If a BIA official issues the decision under this part, the decision is subject to the administrative exhaustion requirements of 25 CFR part 2 before it becomes a ''final agency determination.'' Under these regulatory requirements, interested parties have a 30-day period in which to file an appeal of the BIA official's decision. *See* 25 CFR 2.9. If no appeal is filed within the 30-day administrative appeal period, then the BIA official's decision becomes final for the Department. If an administrative appeal of a BIA official's decision is timely filed with the IBIA [1] (and not precluded due to some other legal or procedural reason, such as standing), then the BIA official's decision is final for the Department after the IBIA affirms the decision.[2] Today's rulemaking makes explicit the requirement that prior to seeking judicial review of a BIA official's decision, a party must first exhaust the administrative remedies available under 25 CFR part 2.

III. Explanation of the New Rule

This rule revises § 151.12 to remove procedural requirements that are no longer necessary in light of *Patchak* and to increase transparency regarding the process for issuing decisions to acquire land in trust under this part. For clarity purposes, this preamble will refer to the regulatory provision codified at § 151.12 in effect from 1996 until the effective date of this final rule as ''the existing rule'' and will refer to the final rule published today as the ''final rule'' or ''new rule.''

A. Deleting the 30-Day Waiting Period

The existing rule provides that the Secretary shall publish a notice of the decision to take land into trust and that the Secretary would acquire title to the subject property no sooner than 30 days after the notice was published. This 30-day waiting period was added to § 151.12 in 1996 to allow parties to seek judicial review of the Secretary's

[1] In those cases in which the Superintendent first issued the decision, the administrative appeal would first be filed with the Regional Director. If the Regional Director affirms the Superintendent's decision, an administrative appeal of the Regional Director's decision could then be filed with the IBIA.

[2] Department regulations provide that the Secretary may take jurisdiction over any matter pending before the Department under 43 CFR 4.5, and that the AS–IA may take jurisdiction from IBIA to review a BIA official decision under 25 CFR 2.20.

decision under the APA. *See* 61 FR 18082 (Apr. 24, 1996). The United States' position at the time, consistent with the position of several Federal circuit courts of appeal, was that the QTA precluded judicial review of the Secretary's decision if the United States held title to the land at issue. *Id.* The Supreme Court has since held in *Patchak* that the Indian lands exception to the QTA's waiver of United States sovereign immunity for quiet title actions does not itself bar judicial review under the APA of the Department's decision to acquire land in trust unless the aggrieved party seeks to quiet title to the subject property. In light of this decision, waiting 30 days after the issuance of a final trust acquisition decision before the Department take the land into trust is now unnecessary. Accordingly, the new rule provides that the Secretary shall, immediately after the decision to acquire land in trust is final for the Department, complete the trust acquisition pursuant to 25 CFR 151.14 after fulfilling the requirements of 25 CFR 151.13 and any other Departmental requirements.

B. Requiring Notification of BIA Officials' Decisions and Administrative Appeal Rights to Known and Unknown Interested Parties

Under existing regulations, BIA officials who issue decisions under this part are required to provide known interested parties with written notice of such decisions. *See* 25 CFR 2.7(a). To ensure that such parties are receiving written notice, the new rule requires interested parties, as that term is currently defined in part 2, to make themselves known to the BIA official in writing in order to receive written notice of the BIA official's decision.[3] Interested parties need only provide written notification to the BIA official prior to the decision being made.[4]

Notices of BIA officials' decisions will continue to include information concerning the process for filing an administrative appeal of the decision, consistent with 25 CFR 2.7(c). Interested parties who appeal a BIA official's decision must meet standing, timeliness, and other requirements that may limit IBIA review of BIA officials' decisions. *See, e.g., Skagit County* v. *Nw. Reg'l Dir.,* 43 IBIA 62, 77 (May 24, 2006) (dismissing appeal on standing grounds due to county's failure to establish that the alleged harm was caused by the decision to acquire land in trust); *No More Slots et al.* v. *Pac. Reg'l Dir.,* 56 IBIA 233, 242–43 (Mar. 18, 2013) (dismissing appeals as untimely).

The final rule adds the new requirement that when a BIA official approves a trust acquisition application, the official will publish notice of that decision in a newspaper of general circulation serving the affected area to reach unknown interested parties. The newspaper notice will contain the same statement that is included in the written notice of decision provided to known interested parties regarding the right, if any, to appeal. The time for unknown interested parties to file a notice of appeal begins to run upon the date of first publication of such newspaper notice.

C. Exhaustion of Administrative Remedies

Under the existing rule, administrative remedies are available under 25 CFR part 2 to challenge a BIA official's decision, and an interested party must first exhaust them before seeking judicial review under the APA. The new rule makes this requirement explicit. Under 25 CFR part 2, interested parties have 30 days from the date they receive notice of the BIA official's decision to file an administrative appeal of such decision. If interested parties fail to appeal within that timeframe, judicial review is unavailable due to the failure to exhaust administrative remedies. *See Darby* v. *Cisneros,* 509 U.S. 137 (1993)*; Klaudt* v. *U.S. Department of the Interior,* 990 F.2d 409, 411–12 (8th Cir. 1993); *Fort Berthold Land & Livestock Ass'n* v. *Anderson,* 361 F.Supp.2d 1045, 1051–52 (D.N.D. 2005).

When the AS–IA issues a decision to acquire land in trust under this part, the decision is final for the Department and not subject to administrative review under part 2 of this title. Still, the existing rule requires publication of notice of such a decision in either the **Federal Register** or a newspaper of general publication. In practice, AS–IA broadly fulfills this publication requirement by publishing notice of its decision in the **Federal Register**. The new rule explicitly codifies this practice. Other changes to § 151.12 are designed to increase transparency, better reflect the process for acquiring land in trust, and respond to comments, as described in the following section.

D. Summary of All Revisions to 151.12

The following table details all revisions this new rule would make to § 151.12, including changes from the proposed rule to the final rule.

Existing 25 CFR §	Existing provision	Description of change from existing	Proposed 25 CFR §	Final 25 CFR §	Description of change from proposed
151.12(a)	"The Secretary shall review all requests and shall promptly notify the applicant in writing of his decision.".	Moves provision regarding promptly notifying the applicant in writing of the decision to (c) and (d).	151.12(a)	151.12(a)	No substantive change from proposed.
151.12(a)	"The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision.".	No substantive change from existing.	151.12(a)	151.12(a)	No substantive change from proposed.

[3] For example, a party that submits written comments to the BIA official in connection with a pending application has made itself ''known'' to the BIA official and will be provided written notice of the decision when issued.

[4] Interested parties may contact the regional BIA office tasked with serving the applicant to obtain the name and contact information of the BIA official responsible for issuing a decision on the application. Contact information for the BIA and its regional offices can be found at *www.bia.gov.*

Existing 25 CFR §	Existing provision	Description of change from existing	Proposed 25 CFR §	Final 25 CFR §	Description of change from proposed
151.12(a)	"If the Secretary determines that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to part 2 of this title.".	States generally that the Secretary's decision will be in writing and state the reasons for the decision, so this requirement applies regardless of whether the decision was an approval or denial. Moves the provision regarding notification of appeal rights to (d)(1) (denial decision by BIA official) and (d)(2)(ii) and (d)(2)(iii) (approval decision by BIA official).	151.12(b) & (d)	151.12(b) & (d)	No substantive change from proposed.
151.12(b)	"Following completion of the Title Examination provided in § 151.13 of this part * * *".	The requirement for a title examination has been moved to (c)(2)(iii) and (d)(2)(iv)(B).	152.12(c) & (d)	152.12(c) & (d)	No substantive change from proposed.
151.12(b)	". . . and the exhaustion of any administrative remedies. . .".	The requirement for exhaustion of administrative remedies has been moved to (d), which is applicable only to decisions issued by a BIA official.	152.12(d)	151.12(d)	Adds explicit reference to exhaustion in (d)(2)(iv).
151.12(b)	". . . the Secretary shall publish in the **Federal Register**, or in a newspaper of general circulation serving the affected area a notice of his/her decision to take land into trust under this part.".	The requirement to publish in the **Federal Register** has been moved to (c)(2)(ii) (decisions by the Assistant Secretary). The requirement to publish in a newspaper has been moved to (d)(2)(iii) (decisions by a BIA official) and now occurs when BIA issues a decision to acquire land in trust, with notice of the opportunity to administratively appeal, rather than when the decision is final. Clarifies that any appeal period begins to run upon first publication. Also clarifies and expands BIA's existing practice of providing written notice to known interested parties and State and local governments with jurisdiction over the land to be acquired of a BIA official's decision to take land into trust.	151.12(c) & (d)	151.12(c) & (d)	Moves clarification of when the appeal period begins to run to a new (d)(3).
151.12(b)	"The notice will state that a final agency determination to take land in trust has been made and . . .".	States that a decision issued by the Assistant Secretary is final for the Department.	151.12(c)	151.12(c)	No substantive change from proposed.

Existing 25 CFR §	Existing provision	Description of change from existing	Proposed 25 CFR §	Final 25 CFR §	Description of change from proposed
151.12(b)	". . . that the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published.".	Deletes statement that the Secretary will acquire title no sooner than 30 days after the notice is published. Instead, provides at (c)(2)(iii) that the Assistant Secretary will "immediately" acquire land into trust and provides at (d)(2)(iv) that the BIA official will "immediately" acquire land into trust upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this title, and upon the fulfillment of Departmental requirements.	151.12(c) & (d)	151.12(c) & (d)	Changes "promptly" to "immediately" in (c)(2)(iii) and (d)(2)(iv).

IV. Comments on the Proposed Rule and Responses

We received 38 comment submissions from Indian tribes and Indian or tribal organizations; 16 from State, county, or local governments and organizations representing such governments; and 12 from members of the public, including individuals, advocacy groups and other organizations. Most tribal commenters were generally supportive of the rule, while most State, county, or local governments and organizations and members of the public were opposed to the rule. This section summarizes and addresses the comments received.

Support—General, Elimination of 30-Day Waiting Period Following AS–IA Decision

Commenters in support of the rule noted that the proposed changes achieve greater transparency and certainty for tribes. These commenters noted that, under *Patchak,* challengers to trust acquisitions may initiate an APA lawsuit at any point during the six-year statute of limitations period following a final decision to acquire the land in trust. According to the tribal commenters, this threat of potential litigation during the six years following the issuance of a final decision creates uncertainty in the trust status of the property, discourages financial institutions from investment, and thereby frustrates tribes' ability to develop their trust lands in a productive, efficient manner for housing, economic development, or other purposes. These tribes believe the rule's elimination of the 30-day waiting period following the issuance of final trust acquisition decisions adds some measure of certainty by ensuring the land is placed into trust as soon as possible. Several tribal commenters noted that the rule does not completely remedy the situation created by *Patchak,* but encourages prompt administrative and judicial review of trust acquisition decisions.

Opposition—General, Elimination of 30-Day Waiting Period Following AS–IA Decision

Some commenters, many of whom were State and local governments, advocated for reexamining and revising all of part 151 and objected to ''piecemeal'' revisions. Some of these commenters expressed that the interests of State and local governments in tax revenues and regulatory jurisdiction, as well as ''social and financial issues'' affecting the tribal and non-tribal communities, are equally important to the goal to restore tribal homelands. *Response:* As described in the Background section of this preamble, restoration of tribal homelands is a policy goal of the IRA, which has provided authority for acquiring land in trust for nearly eight decades. The IRA reflects the unique relationship between the Federal Government and Indians and Indian tribes. The existing framework set forth in part 151 reflects this policy goal and provides for consideration of State and local government concerns. The existing part 151 process provides State and local governments the opportunity to submit comments as to the proposed acquisition's potential impacts on regulatory jurisdiction, real property taxes, and special assessments, and also requires the Secretary to consider jurisdictional problems and any potential conflicts of land use that may arise in connection with the acquisition. The Supreme Court has recognized this process as ''sensitive to the complex inter-jurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory.'' *City of Sherrill* v. *Oneida Indian Nation of N.Y.,* 544 U.S. 197, 220–21 (2005). The final rule does not change this process. As such, we have determined that this narrow revision appropriately addresses the change in legal landscape following *Patchak.*

Some commenters provided various reasons why the 30-day period should be retained (e.g., to allow for the opportunity to negotiate or to identify whether contingencies in an agreement between the tribe and State or local government have been met). Some commenters also claimed eliminating the 30-day period will force a party to file for preliminary relief from a district court prior to the Department's decision, when ripeness is an issue—resulting in an inefficient use of party and judicial resources. *Response:* The new rule does not eliminate the opportunity for a negotiated resolution of issues prior to the issuance of a final decision to acquire land in trust. State and local governments receive notice of the submission of a trust acquisition application, and a State or local government may negotiate with the applicant to resolve any disagreements or address any contingencies prior to the issuance of a final decision to acquire land in trust. Post-*Patchak,* a party can seek judicial review of a final decision to acquire land in trust under the APA regardless of the trust status of the land at issue. The parties may determine for themselves whether

pursuing an injunction is an efficient use of resources in any particular case.

Several commenters recounted the history leading up to the addition of the 30-day waiting period to § 151.12 in 1996, noting that it cured a ''legal infirmity'' by providing a clear avenue for judicial review. A few commenters asserted that the rule is seeking to ''nullify'' or circumvent the Supreme Court's decision in *Patchak. Response:* We generally agree with the history of the 1996 rulemaking as recounted by these commenters, but the legal and practical basis for the 30-day waiting period added to § 151.12 in 1996 no longer exists following the *Patchak* decision. The new rule accepts and implements the Court's holding in *Patchak* by removing a provision made unnecessary by the Court's ruling.

A few tribal commenters stated that there is no compelling reason to revise the rule and risk re-litigation of the constitutionality of the Secretary's authority to acquire land in trust under the IRA. Some commenters stated that the timing of the rule is ill-advised given recent changes in the law related to trust acquisitions under the IRA, including the Supreme Court decision, *Carcieri* v. *Salazar. Response:* The constitutionality of the Secretary's authority to acquire land in trust under the IRA is settled. *See, e.g. Michigan Gaming Opposition* v. *Kempthorne,* 525 F.3d 23, 33 (D.C. Cir. 2008); *South Dakota* v. *United States Dep't of Interior,* 423 F.3d 790, 799 (8th Cir. 2005); *Shivwits Band* v. *Utah,* 428 F.3d 966, 972–74 (10th Cir. 2005). The new rule simply clarifies the Secretary's exercise of that authority.

Self-Stay of Decisions

Several commenters opposed changing the Department's prior practice of, in some instances, agreeing to stay the implementation of a trust acquisition decision after the expiration of the 30-day waiting period in § 151.12 during the pendency of a lawsuit challenging the decision. Other commenters supported ending the current practice, stating that it essentially provided parties who merely file a complaint with several years of *de facto* injunctive relief, without meeting the burden of proving such relief is warranted. *Response:* The Department agrees that the self-stay practice could result in several years of *de facto* injunctive relief for a potentially meritless claim, and, like other Federal agencies (including decisions involving the Federal Government acquiring land), wishes to implement its final decision upon issuance. Agencies typically do not stay implementation of their decisions for the duration of the applicable statute-of-limitations period, and the new rule will require that the Department implement its decision upon the fulfillment of the necessary requirements.

Make All Decisions Effective Immediately (Even at BIA Level)

Several tribal commenters suggested that the new rule should make trust acquisition decisions issued by BIA officials effective immediately and require interested parties that appeal the decision to affirmatively seek a preliminary injunction from the IBIA to stay the implementation of the decision during the pendency of the IBIA appeal. Commenters posited that these procedures would encourage early decisions on the merits of an appeal and shift the burden to appellants to stay the full implementation of the trust acquisition decision. These commenters pointed to 43 CFR 4.21 as an example of a process and related standards that could be adopted in the trust acquisition context. *Response:* The new rule retains the existing administrative appeal process for BIA officials' decisions. Administrative review of BIA officials' trust acquisition decisions before land is taken into trust is appropriate because it ensures consistency in the decision-making across BIA regions and addresses any procedural errors before the decision becomes final for the Department.

Judicial Review Prior to Implementation of Decision

Some commenters stated that the action of acquiring the land in trust prior to judicial review compromises the litigants' ability to achieve due process and a fair and impartial hearing. One commenter stated that this rule would allow land to be put into trust for a controversial gaming project without any prior hearing before a court. Several commenters specifically asserted that the rule violates section 705 of the APA because it allows for transfer into trust before an affected party could file a lawsuit challenging the decision, thereby depriving courts of ''their authority to review trust transfers.'' *Response:* Under the new rule, the transfer of the land into trust may occur before a lawsuit has been filed challenging the decision. The *Patchak* decision makes clear that absent other legal or procedural barriers, judicial review of a final decision to acquire land in trust may be available under the APA regardless of the trust status of the land. Also, under the part 151 process, State and local governments receive notice of the application and may submit comments for consideration by the decision-maker, whether AS–IA or a BIA official. With respect to comments regarding the applicability of APA section 705, we disagree that plaintiffs have a right to injunctive relief under that section. *See, e.g., Corning Savings & Loan Ass'n* v. *Federal Home Loan Bank Board,* 562 F. Supp. 279 (E.D. Ark. 1983).

Availability of Remedy

Several commenters expressed concern that remedies or meaningful relief would not be available once the land is taken into trust because the tribe could assert sovereign immunity, opt not to intervene in a lawsuit challenging the trust acquisition, and/or proceed with development of the property in a manner not permitted under State or local law, creating ''facts on the ground,'' and arguing reliance on the approval and vested interests. *Response:* These comments rely on several assumptions, including the assumption that the decision to take land into trust is not valid. We believe the reasons favoring the removal of the 30-day waiting period, as stated elsewhere in this preamble, outweigh the speculative risks put forward by the commenters' hypothetical scenarios and potential outcomes.

Opportunity for Judicial Review of Claims Still Barred by the Quiet Title Act

Several commenters pointed out that, following *Patchak,* parties who seek to quiet title to the property to be acquired in trust are still barred by the Indian lands exception to the QTA's waiver of United States sovereign immunity from suit, and that such parties would be precluded from challenging the trust acquisition decision once the transfer of the land into trust occurs. These commenters further stated that the mechanisms available to prevent a trust acquisition when there is a competing property interest could fail, leaving the party claiming the competing interest without a judicial remedy. *Response:* The decision-making process set forth at part 151 requires a thorough title examination prior to the issuance of a decision. The Department takes all reasonable and necessary steps to uncover any adverse claims to the property before acquiring the land in trust. In addition, the applicant secures title insurance for the property, adding another measure of certainty that the applicant and the decision-maker have taken all reasonable and necessary steps to ensure that anyone with a competing interest in the property is identified, and their interest is resolved, prior to

the transfer of the property into trust. Given the exhaustive nature of the title examination process and the limitations of judicial remedies on persons who do not record their property interests, the likelihood that a person with a valid competing interest in the property will not be identified is too low to justify delaying implementation of every final decision.

Constitutional ''Taking''

A few commenters stated that the rule raises constitutional ''takings'' issues because the land is ''taken'' into trust without judicial review. One commenter asked how an acquisition decision could be issued for land that is not owned by the tribal applicant. Another commenter stated that a ''takings implication assessment'' under E.O. 12630 is required because a party whose adverse claim in the property is not identified and addressed during the title examination would be precluded from judicial review under the Quiet Title Act. *Response:* Land acquisitions completed pursuant to 25 U.S.C. 465 are voluntary transactions and do not involve the exercise of the eminent domain authority of the United States. In all cases, the land at issue is voluntarily transferred from the applicant or another party to the United States to be held in trust for the applicant. The Department takes all reasonable and necessary steps to identify and resolve competing claims on the property before issuing a decision to acquire the land in trust and completing such trust transfer.

Exhaustion of Administrative Remedies

Several commenters objected to the exhaustion of administrative remedies requirement, stating that the rule precludes legal challenges and insulates BIA decisions from judicial review. Other commenters suggested that the exhaustion requirement be more explicit in the rule. *Response:* The existing rule includes the requirement that interested parties exhaust administrative remedies under 25 CFR part 2 and was reflected in administrative and judicial decisions. This final rule adopts the suggestion that we highlight this requirement for parties who oppose a BIA decision, making the law in this area more transparent and giving parties more knowledge of the ramifications of failing to make a timely appeal.

Applicability of Quiet Title Act to State and Local Governments

Several commenters asserted that justification for the rule is flawed because there is still ''substantial uncertainty'' as to the application of *Patchak* in specific fact situations, involving State or local governments. *Response:* The Department will not speculate on how a court may apply *Patchak* in hypothetical fact situations.

Who the Decision Maker Should Be

Some commenters recommended that the AS–IA issue all trust acquisition decisions because the process for administrative review of BIA officials' decisions is slow, extending the timeframe of uncertainty regarding the trust status of the property. These commenters were also concerned that future Administrations may require that all trust acquisition decisions be decided by BIA officials to delay the finality of trust acquisition decisions. *Response:* Requiring administrative review of BIA officials' trust acquisition decisions is appropriate for reasons stated elsewhere herein. Moreover, the exhaustion requirement ensures that opponents of the trust acquisition decision must file a timely administrative appeal before seeking judicial review. This requirement addresses the risk stemming from *Patchak* that lawsuits challenging decisions will not be filed until years after the decisions are made.

Some commenters stated that they would like the rule to specify when AS–IA will be the decision maker. *Response:* We did not accept this suggestion, as AS–IA retains discretion to issue any decision.

One commenter suggested the Deputy Assistant Secretary should issue all decisions that AS–IA would otherwise decide, to allow the decisions to be administratively appealed to the IBIA. *Response:* AS–IA retains the discretion to issue a decision or assign responsibility to a Deputy Assistant Secretary to issue the decision under 25 CFR 2.20(c). Trust acquisition decisions issued by the AS–IA involve several levels of internal review prior to issuance.

Finality of AS–IA Decisions

A few commenters noted that AS–IA decisions are generally final for the Department unless AS–IA ''provides otherwise in the decision'' under 25 CFR 2.6(c). One commenter noted that an interested party may administratively appeal a BIA official's decision except, among other limitations, when it is approved in writing by the Secretary or AS–IA under 43 CFR 4.331(b). The commenters suggested clarifying this in the rule. *Response:* We have not incorporated this into the new rule because AS–IA trust acquisition decisions are final for the Department when issued. The AS–IA retains the discretion to approve a BIA decision in writing, making it final for the Department.

Administrative Appeal Delays

Several commenters requested adding a provision that would allow tribes to opt out of the administrative appeals process and have AS–IA take jurisdiction, without the time restrictions currently in place at 25 CFR 2.20. Some requested allowing tribes to opt out if IBIA fails to issue a decision by a deadline. *Response:* We determined that an opt-out provision would not be appropriate, to retain both AS–IA's discretion under 25 CFR 2.20 and the mandatory requirement that administrative remedies be exhausted by any party who wishes to seek judicial review.

A commenter suggested mandating that IBIA summarily dismiss appeals that are filed for the purpose of impeding the right of tribes to make use of their trust lands. *Response:* We did not incorporate this comment because it is unclear whether IBIA could summarily determine the intent of an appeal without a full look at the merits. Moreover, changing IBIA procedure is outside the scope of this rule.

Taking Land Out of Trust

Several commenters questioned whether the Department has authority to convey land out of trust as a result of an APA challenge and opined on whether *Patchak* affects that authority to take land out of trust. *Response: Patchak* did not decide, or even consider, whether the Secretary is authorized to take land out of trust. If a court determines that the Department erred in making a land-into-trust decision, the Department will comply with a final court order and any judicial remedy that is imposed.

Effect on the Trust Relationship

A few tribal commenters stated that challenging the decision to acquire land in trust is less intrusive to the trust relationship than challenging the status of lands already held in trust. *Response:* Balancing these few comments with the overwhelming support of other tribes, the Department has determined that taking the land into trust as soon as possible after a final positive trust acquisition decision supports our trust relationship more than an open-ended stay of the trust transfer in all cases.

One tribal commenter stated that the rule does not account for situations where one tribe challenges a decision to take another tribe's land into trust on the basis that it would violate the Federal trust responsibility owed to the

opposing tribe and challenges such tribe's jurisdictional authority. *Response:* These issues are considered during the part 151 decision-making process. *See* 25 CFR 151.8, 151.10.

How Soon After Decision Land Is Taken Into Trust

Some tribal commenters requested that the rule require the Secretary to ''immediately'' take land into trust following the decision to acquire land into trust, rather than ''promptly.'' *Response:* We have incorporated this suggestion in the regulatory text, subject to the fulfillment of Departmental requirements once the decision is issued.

Another tribal commenter suggested changing ''shall'' promptly acquire the land into trust to ''may'' to allow the Secretary more flexibility. *Response:* Retaining the word ''shall'' to require prompt acquisition of the land better supports IRA policy goals, as previously discussed.

A few commenters noted that the proposed rule states that the AS–IA will take land into trust ''on or after'' the decision and fulfillment of requirements, while BIA will take the land into trust ''upon fulfillment'' of the requirements. These commenters suggested imposing a time limit on taking land into trust. *Response:* The date when decisions of BIA officials become final for the Department varies because such decisions are subject to administrative review and, during the period between the date the BIA official issues a decision and the date such decision is final for the Department, issues may arise that require resolution prior to the trust transfer. For these reasons, we decided not to adopt the suggestion that we impose a time limit on taking land in trust; however, we have slightly changed the text of the rule to make temporal requirements as consistent as possible.

A few tribal commenters requested clarification of the ''other Departmental requirements'' that the Department must comply with before taking land into trust, deleting this phrase, or replacing it with ''statutory and regulatory requirements.'' *Response:* Departmental trust requirements may change in the future by statute, through notice and comment rulemaking, or through established procedures for changing Departmental policy. Instead of amending this rule each time to reflect such changes, we chose to retain the phrase ''other Departmental requirements.''

Title Work

Several tribal commenters requested modifying the rule to require BIA to perform the title examination and all the paperwork necessary for conveyance before the trust acquisition decision becomes final for the Department. Some also suggested collapsing the preliminary title opinion (PTO) and final title opinion (FTO) into one title opinion. *Response:* These suggestions were not adopted. As discussed above, BIA officials' decisions become final for the Department after exhaustion of administrative review, so the amount of time between the issuance of a trust acquisition decision and the date that decision becomes final for the Department varies. BIA performs as much work as possible during the 30-day administrative appeal period. Some aspects, such as the Certificate of Inspection and Possession (CIP), must be completed soon before the acquisition so that the Department has up-to-date information about site conditions and possible unrecorded claims to the land, and thus, it is appropriate for BIA to wait and see if the decision is appealed before it conducts the CIP.

Notice and Opportunities for Public Participation

Several tribal commenters stated their support of the rule's clarifications on what types of notice will be provided depending on whether the AS–IA or a BIA official issues the decision, and that State and local governments having regulatory jurisdiction over the land to be acquired continue to receive written notice of BIA officials' decisions. Other commenters stated their concern that they will not have notice of the application or notice of the decision before land is taken into trust. *Response:* The existing regulations at 25 CFR 151.10 and 151.11 require BIA to provide State and local governments notice of the application. In practice, BIA also sends notice of the application to any party who has submitted a written request for notice. This rule codifies existing practice by requiring written notice to State and local governments when a BIA official makes the decision. It also clarifies and broadens notice requirements, first, by requiring written notice of BIA official decisions to interested parties who have made themselves known in writing and, second, by publication of the decision and information concerning the administrative appeals process in a newspaper of general circulation serving the affected area to reach unknown interested parties. Notice of AS–IA decisions will continue to be published in the **Federal Register**. While this publication may occur after the land has been acquired in trust, State and local governments and other interested parties have opportunities to participate in the process prior to the decision, and we have revised the rule to reflect that publication of notice of the decision in the **Federal Register** must occur ''promptly'' after the decision.

Several commenters objected to having two sets of notice requirements depending on who issues the decision and offered preferences for how notice for all decisions should be provided. Many of these commenters were under the mistaken impression that, under the existing rule or current practice, notices of all decisions were published in the **Federal Register**. *Response:* Under the existing rule, the Secretary could publish notice in either the **Federal Register** or in a newspaper. Publication of all notices in the **Federal Register** would be cost prohibitive. It has been AS–IA's longstanding practice to publish notice of its final trust acquisition decisions in the **Federal Register** and BIA's longstanding practice to publish notice of its decisions in the newspaper of general circulation serving the affected area. The purpose of each type of notice depends upon who issues the decision: notice of BIA decisions provides notice that administrative review of the decision is available; notice of AS–IA decisions provides notice that the decision is final. Thus, we believe that two different methods of providing notice are appropriate.

A few commenters stated that making an oral comment at a public meeting should be sufficient to identify themselves as an interested party and satisfy ''exhaustion of administrative remedies.'' *Response:* Requiring a party to identify themselves in writing to receive written notice of a BIA official's decision helps to ensure that BIA receives accurate contact information for the interested party. An oral comment at a public meeting may not always convey this necessary information and will not, in all cases, establish that the speaker wants to receive written notice of the decision. Further, making a comment at a public meeting about a pending application does not exhaust administrative remedies as required under this part. Administrative review of a BIA official's decision can occur only after such decision is issued. In addition, administrative review involves a determination of ''whether BIA gave proper consideration to all legal prerequisites to the exercise of BIA's

discretionary authority, including any limitations on its discretion that may be established in the regulations.'' *See City of Yreka, Cal. et al.* v. *Pac. Reg'l Dir.,* 51 IBIA 287, 294 (2010), *aff'd sub nom. City of Yreka* v. *Salazar,* 2011 U.S. Dist. LEXIS 62818 (E.D. Cal. June 14, 2011), *appeal dism'd,* No. 11–16820 (9th Cir. Feb. 21, 2013). The burden is on appellant to demonstrate that BIA erred in its decision-making or that the decision is ''not supported by substantial evidence.'' *Id.* A verbal comment to a Department official on the application does not meet this burden.

A few commenters stated that the tribe should ''exhaust'' its obligation to participate before every BIA decision maker, arguing that a tribe should not be able to raise as a defense to a legal challenge any argument it has not filed with BIA. *Response:* It would be unreasonable to expect any party to ever fully anticipate and raise defenses to all claims that could ever be made against its interest at some point in the future. Further, there is no obligation for the tribal applicant to participate in every stage of the administrative review of a BIA official's decision.

A commenter stated that there should be more notice to State and local governments, citing other Federal laws and the U.S. Constitution. *Response:* Notice to State and local governments under this rule is adequate for the purposes of implementing the IRA. The purposes and processes of other statutes differ and are not instructive here. Further, the constitutionality of the IRA is well established.

Some commenters requested the rule replace ''interested parties'' with ''parties'' to clarify that participation in the administrative process does not give a party standing to bring suit, which must be independently established. Other commenters suggested incorporating 25 CFR 2.2's definition of ''interested party'' by reference. *Response:* We clarified that ''interested party'' is defined by 25 CFR 2.2 (''any person whose interests could be adversely affected by a decision in an appeal''). To obtain a decision from the IBIA on the merits of their appeal, an interested party must establish they were adversely affected by the decision. *See Anderson* v. *Great Plains Reg'l Dir.,* 52 IBIA 327, 331–32 (Dec. 10, 2010).

One commenter stated that the proposed rule incorrectly concludes that it is not subject to the Paperwork Reduction Act (PRA) because the requirement that interested parties make themselves known is an information collection. *Response:* The regulations at 25 CFR part 151 have approved information collection requirements under OMB Control Number 1076–0100; however, this rule does not add any new information collection requirements within the meaning of the PRA. *See* 5 CFR 1320.3(h).

In addition, we incorporated commenters' following suggestions: clarifying that the date of receipt of the notice of decision begins the 30-day appeal period for applicants, known interested parties, and State and local governments; requiring notice to State and local governments as well as other interested parties be ''promptly'' provided; and eliminating the requirement that interested parties make themselves known at each stage of administrative review of a BIA official's decision.

Implementation

A number of commenters requested that Part 151 be implemented in specific ways, e.g., by ensuring that notices are issued concurrently, listing individual trust applications and decisions on the Web site, and making clear in each notice that administrative exhaustion applies. *Response:* While these comments are outside the scope of the rule, we will consider them for implementation.

Several commenters suggested updating the Fee-to-Trust Handbook and notice forms to comport with these regulatory changes and releasing the updated Handbook with the final rule. Commenters also requested that BIA draft the Handbook for use by affected parties, rather than for internal BIA use, and make it available for public comment upon revision. *Response:* Revisions to the Handbook will be made to comport with the new notice procedures in this rule as soon as possible. As the Handbook is internal guidance and does not impose requirements on parties other than BIA personnel, prior notice and comment before revising is not necessary.

Miscellaneous

A few commenters stated that the rule makes the fee-to-trust process less transparent, more favorable to tribes, and more difficult for challengers. *Response:* The rule is intended to increase transparency by explicitly stating the process for issuing trust acquisition decisions and the availability of administrative or judicial review of such decisions. We declined to accept commenters' suggestion to cross-reference certain provisions of 25 CFR part 2 because the rule is intended to make the processes in this specific context (of trust acquisition decisions) as transparent as possible. The new rule simply accepts and implements the Court's holding in *Patchak* by removing a provision made unnecessary by the Court's ruling. The rule does not increase the difficulty for other entities; rather, it provides for notice to State and local governments and other interested parties to alert them to the availability of administrative or judicial review.

A few commenters provided comments on circumstances regarding specific cases that are currently in litigation. *Response:* We decline to address these comments because they are the subject of current litigation.

A few commenters supported requiring appeal bonds, while one commenter opposed requiring appeal bonds. *Response:* The regulations governing the imposition of administrative appeal bonds are beyond the scope of this regulation.

A commenter suggested considering imposing deadlines for all trust acquisition decisions. *Response:* Because the circumstances surrounding each trust acquisition are unique, it is not feasible to impose meaningful deadlines.

A commenter suggested the new rule treat off-reservation acquisitions differently. *Response:* There is not sufficient justification for treating off-reservation acquisitions differently in § 151.12.

A few tribal commenters suggested requiring AS–IA and BIA to consult the tribe immediately prior to taking land into trust, to ensure there have not been changed circumstances that would make acquisition undesirable for the tribe. *Response:* Under current practice, we ask that the applicant alert BIA as soon as possible if there are any issues that may prompt the tribe to withdraw its application.

One commenter asserted that a State must cede jurisdiction over land for it to come under tribal jurisdiction. *Response:* No such requirement exists.

Several commenters suggested changes to other CFR parts. *Response:* We will consider these requests in prioritizing future regulatory changes.

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty,

and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises because the rule is limited to appeals of acquisitions of Indian land.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is therefore not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule ensures notification to State and local governments of a BIA official's decision to take land into trust and the right to administratively appeal such decision. This rule also ensures notification to State and local governments of an AS–IA official's decision through publication in the **Federal Register**.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets. During development of the rule, the Department discussed the rule with tribal representatives. Following publication of the proposed rule on May 29, 2013, the Department distributed a letter to all tribes seeking written comment on the proposed rule and held a tribal consultation session on June 24, 2013, in Reno, Nevada. Section IV of this preamble summarizes comments received by tribes, as well as other comments received throughout the public comment period, and responds to each.

I. Paperwork Reduction Act

This rule does not contain any information collections requiring approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 25 CFR Part 151

Indians—lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 151 in Title 25 of the Code of Federal Regulations as follows:

PART 151—LAND ACQUISITIONS

■ 1. The authority citation for part 151 continues to read as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

■ 2. Revise § 151.12 to read as follows:

§ 151.12 Action on requests.

(a) The Secretary shall review each request and may request any additional information or justification deemed necessary to reach a decision.

(b) The Secretary's decision to approve or deny a request shall be in writing and state the reasons for the decision.

(c) A decision made by the Secretary, or the Assistant Secretary—Indian Affairs pursuant to delegated authority, is a final agency action under 5 U.S.C. 704 upon issuance.

(1) If the Secretary or Assistant Secretary denies the request, the Assistant Secretary shall promptly provide the applicant with the decision.

(2) If the Secretary or Assistant Secretary approves the request, the Assistant Secretary shall:

(i) Promptly provide the applicant with the decision;

(ii) Promptly publish in the **Federal Register** a notice of the decision to acquire land in trust under this part; and

(iii) Immediately acquire the land in trust under § 151.14 on or after the date such decision is issued and upon fulfillment of the requirements of

§ 151.13 and any other Departmental requirements.

(d) A decision made by a Bureau of Indian Affairs official pursuant to delegated authority is not a final agency action of the Department under 5 U.S.C. 704 until administrative remedies are exhausted under part 2 of this chapter or until the time for filing a notice of appeal has expired and no administrative appeal has been filed.

(1) If the official denies the request, the official shall promptly provide the applicant with the decision and notification of any right to file an administrative appeal under part 2 of this chapter.

(2) If the official approves the request, the official shall:

(i) Promptly provide the applicant with the decision;

(ii) Promptly provide written notice of the decision and the right, if any, to file an administrative appeal of such decision pursuant to part 2 of this chapter, by mail or personal delivery to:

(A) Interested parties who have made themselves known, in writing, to the official prior to the decision being made; and

(B) The State and local governments having regulatory jurisdiction over the land to be acquired;

(iii) Promptly publish a notice in a newspaper of general circulation serving the affected area of the decision and the right, if any, of interested parties who did not make themselves known, in writing, to the official to file an administrative appeal of the decision under part 2 of this chapter; and

(iv) Immediately acquire the land in trust under § 151.14 upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this title, and upon the fulfillment of the requirements of § 151.13 and any other Departmental requirements.

(3) The administrative appeal period under part 2 of this chapter begins on:

(i) The date of receipt of written notice by the applicant or interested parties entitled to notice under paragraphs (d)(1) and (d)(2)(ii) of this section;

(ii) The date of first publication of the notice for unknown interested parties under paragraph (d)(2)(iii) of this section.

(4) Any party who wishes to seek judicial review of an official's decision must first exhaust administrative remedies under 25 CFR part 2.

Dated: November 4, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–26844 Filed 11–12–13; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0919]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the S168 Bridge (Battlefield Boulevard) across the Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, mile 12.0, at Chesapeake (Great Bridge), VA. The deviation is necessary to accommodate the annual Christmas parade. This deviation allows the bridge to remain in the closed-to-navigation position for the set up of the event and the duration of the Christmas parade.

DATES: This deviation is effective from 4 p.m. on December 7, 2013 to 10 p.m. on December 8, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0919] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mrs. Jessica Shea, Coast Guard; telephone (757) 398–6422, email *jessica.c.shea2@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The City of Chesapeake, who owns and operates the S168 Bridge across the Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, mile 12.0 at Chesapeake (Great Bridge), VA has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.997(g), to accommodate their annual Christmas parade. Normally, the bridge opens on signal; except that, from 6 a.m. to 7 p.m., the draw need be opened only on the hour or, if the vessel cannot reach the draw exactly on the hour, the draw tender may delay the hourly opening up to ten minutes past the hour.

In the closed-to-navigation position, this lift-type drawbridge provides a vertical clearance of 8.5 feet above mean high water.

The Chesapeake annual Christmas parade event is scheduled for December 7, 2013. Under this temporary deviation, the drawbridge will remain in the closed position to vessels requiring an opening from 4 p.m. to 6 p.m. and from 8 p.m. to 10 p.m. on December 7; with an inclement weather date of December 8 from 4 p.m. to 6 p.m. and from 8 p.m. to 10 p.m.

Vessels that may safely transit under the drawbridge while it is in the closed position may do so at any time. The Atlantic Intracoastal Waterway caters to a variety of vessels from tug and barge traffic to recreational vessels traveling from Florida to Maine. The Atlantic Ocean is the alternate route for vessels and the bridge will be able to open in the event of an emergency. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: October 30, 2013.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013–27068 Filed 11–12–13; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 385

[Docket No. 2011–3 CRB Phonorecords II]

Adjustment of Determination of Compulsory License Rates for Mechanical and Digital Phonorecords

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations setting

the rates and terms for the section 115 statutory license for the use of musical works in physical phonorecord deliveries, permanent digital downloads, ringtones, interactive streaming, limited downloads, limited offerings, mixed service bundles, music bundles, paid locker services, and purchased content locker services.

DATES: *Effective:* January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. Telephone: (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 115 of the Copyright Act, title 17 of the United States Code, also known as the mechanical compulsory license, requires a copyright owner of a nondramatic musical work to grant a license to any person who wants to make and distribute phonorecords of that work, including digital phonorecord deliveries,[1] provided that the copyright owner has allowed phonorecords of the work to be produced and distributed to the public, and that the licensee complies with the statute and attendant regulations. 17 U.S.C. 115(a).

The Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for the section 115 license. 17 U.S.C. 801(b)(1) and 804(b)(4).[2] Thus, the Judges, in accordance with 17 U.S.C. 804(b)(4), published a notice in the **Federal Register** commencing the current proceeding to set rates and terms for the section 115 license and requesting interested parties to submit their petitions to participate. 76 FR 590 (Jan. 5, 2011). In response to the notice, the Judges received 24 petitions to participate.[3] The Judges set the timetable for the three-month negotiation period, *see* 17 U.S.C. 803(b)(3), as well as a deadline of April 30, 2012, for the participants' submission of written direct statements. On April 11, 2012, the Judges received a Motion to Adopt Settlement stating that ''[a]ll participants in the Proceeding are parties to the Settlement or have reviewed the Settlement and do not object to its being adopted as the basis for setting statutory rates and terms.''[4] Motion to Adopt Settlement, at 2 (Apr. 11, 2012).

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval. This section provides in part that the Judges must provide to both non-participants and participants to the rate proceeding who ''would be bound by the terms, rates, or other determination set by any agreement * * * an opportunity to comment on the agreement.'' 17 U.S.C. 801(b)(7)(A)(i). Participants to the proceeding may also ''object to [the agreement's] adoption as a basis for statutory terms and rates.'' *Id.*

The Judges ''may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,'' only ''if any participant [to the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.'' 17 U.S.C. 801(b)(7)(A)(ii). Accordingly, on May 17, 2012, the Judges published a notice requesting comment on the proposed rates and terms, with certain modifications, submitted to the Judges.[5]

The Judges received two comments in response to the May 17 notice—one from the Settling Parties and the other from Gear Publishing Company (Gear), a non-participant. On November 20, 2012, five months after the deadline, the Judges received a third comment from Robert Clarida, also a non-participant, supporting the objections lodged by Gear in its June comments.[6] The Settling Parties supported adoption of the settlement, suggested correction of certain non-substantive errors and raised certain stylistic issues with regard to the proposed regulatory text.[7] Gear's objections were primarily policy-based concerns about the appropriate scope of the compulsory license. *See, e.g.,* Comments of Gear Publishing Company, at 2 (''it is inappropriate to offer interactive streaming and limited download rights via compulsory license until there is sufficient evidence to demonstrate that these uses will provide long term sustainable revenue * * *.'') and 4 (''promotional consideration'' should not be allowed under a compulsory license). Mr. Clarida's comments, which were submitted at Gear's request, *see* Clarida Comments at 2, challenged the compatibility of the proposed rates and terms with the section 115 license. *See, e.g.,* Clarida Comments at 3–4 (promotional royalty rate of zero proposed in § 385.14 violates section 115 of the Copyright Act).

Section 801(b)(7)(A)(ii) limits the Judges' ability to reject an agreement on the reasonableness of the rates and terms published for comment. The Judges may decline to adopt an agreement as a basis for statutory terms and rates for participants that are not parties to the agreement if a participant that would be bound by the agreement objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.* Neither Gear nor Mr. Clarida qualifies as a participant to this proceeding, as neither submitted a petition to participate. Therefore, the Judges cannot consider any objections lodged by them, as non-participants, regarding the reasonableness of the rates and terms. *See Determination of Reasonable Rates and Terms for Noncommercial Broadcasting, Final rule,* Docket No. 2011–2 CRB NCEB II, 77 FR 71104, 71107 (Nov. 29, 2012); *see also, Review of Copyright Royalty Judges Determination, Notice; correction,*

[1] The Digital Performance Right in Sound Recordings Act, Public Law 104–39, 109 Stat. 336 (1995), extended the mechanical license to digital phonorecord deliveries. Consequently, the license covers digital transmissions of phonorecords in addition to the physical copies such as compact discs, vinyl and cassette tapes.

[2] The Judges commenced a proceeding in 2006, as directed by section 804(b)(4) of the Copyright Act, and published their final determination in the **Federal Register** on January 26, 2009. 74 FR 4510. Therefore, commencement of the next proceeding—the current proceeding—was to occur in January 2011. 17 U.S.C. 804(b)(4).

[3] A complete list of parties submitting petitions to participate can be found at 77 FR 29261 (May 17, 2012). The Judges also received one filing styled as a ''Comment in Response to Request for Petitions to Participate,'' which subsequently was withdrawn. *See* 77 FR at 29261 n.3.

[4] The Settling Parties are comprised of National Music Publishers' Association, Inc.; the Songwriters Guild of America; the Nashville Songwriters Association International; the Church Music Publishers Association; the Recording Industry Association of America; Digital Media Association; and CTIA-the Wireless Association. One participant's signature was omitted inadvertently from the motion and subsequently provided on April 18, 2012. *See* 77 FR 29260 n.4. Although two participants did not sign the motion, the Judges presume that they each reviewed the settlement and harbored no objection to its adoption, per the signatories' representation. *Id.*

[5] The Judges questioned whether the adoption of two accounting provisions, found in proposed § 385.12(e) and § 385.22(d), would encroach on the Register of Copyrights' (Register) exclusive jurisdiction to promulgate regulations governing the statements of account to be submitted under section 115 of the Copyright Act. *See* 77 FR 29259, 29260–61 (May 17, 2012). This issue is discussed *infra.*

[6] On March 12, 2013, the Judges received a letter from the Settling Parties, which in part, urged that Mr. Clarida's comments not be considered due to the untimeliness of the submission. The Settling Parties' request is noted; the Judges decide, however, to consider Mr. Clarida's comments to address his contention that certain provisions are contrary to the statute.

[7] The Judges have corrected the non-substantive errors and addressed the stylistic issues in regard to the regulatory text identified by the Settling Parties in Exhibit A to their comment.

Docket No. 2009–1, 74 FR 4537, 4540 (Jan. 26, 2009) (Judges able to review reasonableness of terms and rates contained in agreement only if a participant to the proceeding objects to the agreement).

The Judges may, however, ''declin[e] to adopt other portions of an agreement that would be contrary to the provisions of the applicable license(s) or otherwise contrary to statutory law.'' 74 FR at 4540. Mr. Clarida's comments assert that certain of the proposed rules violate the section 115 statutory license. His assertions will be addressed below.

Referral of Material Questions to the Register of Copyrights

Section 802(f)(1)(A)(ii) of the Copyright Act, in pertinent part, authorizes one or more of the Judges to request from the Register ''an interpretation of any material questions of substantive law that relate to the construction of provisions of this title and arise in the course of the proceeding.'' Any request for a written interpretation must be in writing and on the record, and participants to the proceeding must be given an opportunity to comment on the question(s) referred. *Id.*

On March 27, 2013, the Chief Copyright Royalty Judge issued an order referring material questions of law to the Register concerning the Judges' authority to adopt certain terms in the Settling Parties' Proposed Settlement relating to statements of account. *See Order Referring Material Questions of Law and Setting Briefing Schedule,* Docket No. 2011–3 CRB Phonorecords II (Mar. 27, 2013). The proposed terms involved the accounting provisions proposed in 37 CFR 385.12(e) and 385.22(d) and the confidentiality provisions proposed in 37 CFR 385.12(f) and 385.22(e).[8] *Id.* at 3. The Register delivered her decision to the Judges on May 1, 2013, and published it in the **Federal Register** on May 16, 2013. 78 FR 28770.

Proposed Accounting Provisions

The Register found that the accounting provisions proposed in §§ 385.12(e) and 385.22(d)[9] ''represent an encroachment on the Register's [exclusive] authority'' regarding statements of account even though the proposed provisions are consistent with the Register's current regulations. *Id.* at 28772. In light of the Register's interpretation, the Judges cannot adopt proposed §§ 385.12(e) and 385.22(d). Nevertheless, the Judges recognize the parties' efforts to reach an agreement and the importance of these provisions to the agreement. *See* Letter from Settling Parties to Copyright Royalty Judges (June 7, 2013) (on file with the Copyright Royalty Board) (proposed provisions ''reflect an industry-wide consensus on necessary detail requirements as part of the accounting process for the proposed percentage rates'' and represent an ''important factor in reaching a settlement'' in this proceeding). Therefore, the Judges recommend that the Register include these provisions in the amendments to the regulations regarding statements of account currently being considered in the Copyright Office's ongoing rulemaking. S*ee Division of Authority Between the Copyright Royalty Judges and the Register of Copyrights under the Section 115 Statutory License,* Docket No. RF 2008–1, 73 FR 48396, 48398 (Aug. 19, 2008) (the Judges may recommend that the Register ''amend the regulations governing statements of account to include additional information.'').

Proposed Confidentiality Provisions

Conversely, the Register found that the confidentiality provisions proposed at §§ 385.12(f) and 385.22(e)[10] do not ''encroach upon the Register's authority with respect to statements of account'' nor do they ''conflict with any other authority reserved for the Register.'' 78 FR at 28773. The Register questioned, however, whether the Judges ''have any independent authority to issue regulations such as the proposed confidentiality [provisions] which would impose obligations on a copyright owner with regard to what he or she is able to do with a statement of account received by a licensee.'' *Id.* Consequently, the Register highlighted another potential novel question of law: the question of the Judges' authority regarding ''imposing requirements on what a *copyright owner* (as opposed to a licensee) may do (or not do) with information provided in a statement of account after that statement was prepared and served in accordance with the [Copyright] Office's regulations.'' *Id.* (*emphasis in original*).

Referral of Novel Question to the Register of Copyrights

Accordingly, on May 17, 2013, the Judges referred to the Register the novel question of ''whether the [Judges] have the authority to impose a confidentiality requirement such as that proposed in §§ 385.12(f) and 385.22(e).'' *See Order Referring Novel Question of Law and Setting Briefing Schedule,* Docket No. 2011–3 CRB Phonorecords II, at 4.[11] The Register delivered her decision to the Judges on July 25, 2013, and published it in the **Federal Register** on August 5, 2013. 78 FR 47421.

The Register concluded that the Judges are without authority to ''adopt the provisions imposing a duty of confidentiality upon copyright owners, regardless of whether the provisions are included in a voluntarily negotiated license agreement between copyright owners and licensees.'' *Scope of the Copyright Royalty Judges' Authority to Adopt Confidentiality Requirements upon Copyright Owners within a Voluntarily Negotiated License*

[8] The Order directed participants to submit an initial brief no later than April 5, 2013, and to submit reply briefs no later than April 12, 2013. The lone brief, submitted by the Settling Parties, was transmitted to the Register on April 17, 2013.

[9] Proposed § 385.12(e) would have required the licensee's statement of account to ''set forth each step of its calculations with sufficient information to allow the copyright owner to assess the accuracy and manner in which the licensee determined the payable royalty pool and per-play allocations (including information sufficient to demonstrate whether and how a minimum royalty or subscriber-based royalty floor pursuant to § 385.13 does or does not apply) and, for each offering reported, also indicate the type of licensed activity involved and the number of plays of each musical work (including an indication of any overtime adjustment applied) that is the basis of the per-work royalty allocation being paid.'' 77 FR at 29267 (May 17, 2012). The language of proposed § 385.22(d) mirrors that in § 385.12(e), except for non-substantive conforming language needed for its inclusion in proposed Subpart C.

[10] The confidentiality provisions proposed in §§ 385.12(f) and 385.22(e) would mandate: ''A licensee's statements of account, including any and all information provided by a licensee with respect to the computation of a subminimum, shall be maintained in confidence by any copyright owner, authorized representative or agent that receives it, and shall solely be used by the copyright owner, authorized representative or agent for purposes of reviewing the amounts paid by the licensee and verifying the accuracy of any such payments, and only those employees of the copyright owner, authorized representative or agent who need to have access to such information for such purposes will be given access to such information; provided that in no event shall access be granted to any individual who, on behalf of a record company, is directly involved in negotiating or approving royalty rates in transactions authorizing third party services to undertake licensed activity with respect to sound recordings. A licensee's statements of account, including any and all information provided by a licensee with respect to the computation of a subminimum, shall not be used for any other purpose, and shall not be disclosed to or used by or for any record company affiliate or any third party, including any third-party record company.'' 77 FR at 29262, 29267–68.

[11] The Order directed participants to submit an initial brief no later than June 7, 2013, and to submit reply briefs no later than June 21, 2013. The lone brief, submitted by the Settling Parties, was transmitted to the Register on June 25, 2013. The Settling Parties also submitted a letter requesting that the Judges recommend to the Register that the language in the accounting provisions proposed in §§ 385.12(e) and 385.22(d) be incorporated into the Copyright Office's regulations governing statements of account. The Judges transmitted the letter to the Register. As discussed *supra,* the Judges have made the requested recommendation.

Agreement, Final Order, Docket No. 2011–3 CRB, 78 FR at 47423. The Register noted that section 115(c)(3)(D) of the Copyright Act grants to the Judges the authority to establish ''notice and recordkeeping requirements under which such records of use shall be kept and made available *by licensees''* but not to those to ''be kept and made available by *copyright owners.'' Id.* (*emphasis in original*). Moreover, she found that ''such provisions are not necessary to effectively implement the [section 115] statutory license or to insure the smooth administration of the [section 115] license.'' *Id.* In light of the Register's interpretation, the Judges cannot adopt the confidentiality requirements in §§ 385.12(f) and 385.22(e) of the proposed settlement.

Having addressed the Register's concerns with the proposed settlement, the Judges now turn to the concerns raised by Mr. Clarida.

Comments of Mr. Clarida

When presented with a settlement agreement, the Judges' task is to implement the settlement to the extent possible as long as no provision on its face violates the statutory license at issue. *See* 17 U.S.C. 801(b)(7)(A); *see also* H.R. Rep. No. 108–408, at 24 (2004) (purpose of provision to facilitate and promote settlements). With this statutory task in mind, the Judges consider Mr. Clarida's challenge to the legal validity of the promotional ''free trial'' royalty rates (proposed §§ 385.14(b)(1), 385.21, and 385.24), and Subpart C activities (i.e., ''Limited Offerings, Mixed Service Bundles, Paid Locker Services, and Purchased Content Locker Services'') (proposed §§ 385.20–24).[12]

Mr. Clarida's Concerns Regarding Promotional and ''Free Trial'' Royalty Rates

Mr. Clarida argues that the promotional royalty rate of zero in proposed § 385.14(b)(1) violates section 115 of the Copyright Act, which, according to Mr. Clarida, requires that every phonorecord made and distributed under the license be subject to a royalty. Clarida Comments, at 3–4. He contends that ''[z]ero is not a royalty; it is an exemption,'' and only Congress possesses the authority to create statutory exemptions under the Copyright Act. *Id.* at 4. The Judges' adoption of a royalty rate of zero, Mr. Clarida charges, would result in the creation of ''a new statutory exemption in the guise of a regulation.'' *Id.* at 4–5.

Mr. Clarida also alleges legal infirmities with the ''free trial royalty rate of zero'' defined in proposed § 385.21[13] and applied in proposed § 385.24. Proposed § 385.24, in his view, allows a record company, rather than the owner of a musical work, to permit use of that label's sound recordings *gratis* to ''promote the offering'' of a limited offering service, mixed service bundle, or paid locker service. *Id.* at 5. Mr. Clarida contends that this provision ''does not even credibly further the statutory purpose of encouraging the sales of musical works.'' *Id.* He posits that proposed § 385.24 conceivably elevates technology companies and record companies to the status of joint copyright owners of the musical works, instead of mere licensees, thereby allowing licensees ''to usurp the copyright owner's exclusive rights with respect to works beyond the licensee's own phonorecords'' in violation of section 115 of the Copyright Act. *Id.* 5–6 (*footnote omitted*).

Mr. Clarida interprets section 115(c)(4) of the Copyright Act as requiring that even where distribution of a phonorecord is by rental, lease, or lending, the royalty must be calculated ''based on revenue generated 'from every such act' of distribution of the phonorecord under this clause.'' *Id.* at 6 (*emphasis omitted*). He concludes that ''the [proposed free trial royalty rate] does away with this required nexus between the distribution of specific phonorecords and the calculation of payment, allowing for extensive royalty-free use by compulsory licensees.'' *Id.* (*footnote omitted*).

Judges' Response

The Judges find Mr. Clarida's challenges unavailing. A royalty rate of zero set for a statutory license, while not common, is not unprecedented under the Copyright Act. Indeed, in 2009 the Judges adopted the promotional royalty rate in § 385.14 challenged here by Mr. Clarida. The Register reviewed the Judges' adoption of the zero rate, which is still in effect, and found no legal error in such action.[14] *See Review of Copyright Royalty Judges Determination, Notice; correction,* Docket No. 2009–1, 74 FR 4537 (Jan. 26, 2009). *See also Rate Adjustment for the Satellite Carrier Compulsory License, Final rule and order,* Docket No. 96–3 CARP SRA, 62 FR 55742, 55753 (Oct. 28, 1997) (the Librarian of Congress upheld the imposition by a Copyright Arbitration Royalty Panel of a zero royalty rate for the retransmission of certain distant signals by satellite carriers under the section 119 statutory license and accepted the Register's recommendation to adopt a zero royalty rate for certain local retransmissions of network signals.).

The Judges also disagree with Mr. Clarida's assertion that other provisions of the Copyright Act, which create exceptions to the payment of royalties in other contexts, imply that the Judges cannot approve a settlement and adopt regulations in which a royalty rate of zero is established for certain promotions or trial periods under section 115 of the Copyright Act. The fact that by granting exceptions Congress has determined, in effect, that in certain circumstances a royalty rate of zero must always apply does not imply that in all other circumstances a royalty rate of zero may never apply. Any mandatory statutory waiver of the payment of royalties in other contexts cannot serve to prohibit the Judges, in the exercise of their discretion, from incorporating into the regulations the terms of a settlement in which a zero royalty rate is established.[15]

[12] Mr. Clarida also challenges the legal validity of the confidentiality provisions (proposed §§ 385.12(f), 385.22(e)). The Register's determination that the Judges have no authority to impose an obligation of confidentiality on a copyright owner with respect to a statement of account renders Mr. Clarida's arguments on this point moot.

Moreover, at the outset of his comments, Mr. Clarida makes a vague, passing challenge to the Proposed Rule on the basis that ''the proposed changes, if adopted, would risk placing the United States in violation of Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). *Clarida Comments,* at 2. Congress was clear, however, that TRIPS may not be used as a basis for challenging any action of a federal agency and that, to the extent any conflict exists between TRIPS and U.S. law, U.S. law governs. The Uruguay Round Agreements Act, Public Law 103–465, sections 102(a)(1), (c)(1)(B), 108 Stat. 4809 (1994). The Judges, therefore, will be guided by the provisions of the Copyright Act and will not consider any objections based on TRIPS.

[13] Proposed § 385.21 defines ''free trial royalty rate'' as ''the statutory royalty rate of zero in the case of certain free trial periods, as provided in § 385.24.''

[14] The Register suggested, in issuing an interim rule clarifying the definition of a ''digital phonorecord delivery,'' that a zero rate may be appropriate in certain circumstances. *See Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries, Interim rule and request for comments,* Docket No. RM 2000–7, 73 FR 66173, 66181 (Nov. 7, 2008)(''[T]he Office would not dispute a finding that non-interactive and interactive streams have different economic value, or even that a rate of zero might be appropriate for [digital phonorecord deliveries] made in the course of non-interactive streams.'').

[15] As noted *supra,* a ''participant'' in this proceeding could have objected to the reasonableness of the rates and terms of the settlement and the proposed regulations. If a

Continued

Accordingly, the Judges conclude that nothing in the Copyright Act indicates that adoption of a zero royalty rate is contrary to section 115 of the Copyright Act; and the Judges adopt, as published on May 17, 2012, the provisions relating to the promotional and ''free trial'' royalty rates.

Mr. Clarida's Concerns Regarding Subpart C Activities

Mr. Clarida charges that the use of the statutory license under section 115 of the Copyright Act by ''entirely new classes of 'bundled' activity: So-called mixed service bundles, music bundles, paid locker services, and purchased content locker services'' violates the primary-purpose requirement of section 115(a), which states ''[a] person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use, including by means of a digital phonorecord delivery.'' Clarida Comments at 7. Such bundling, he concludes, results in ''an impermissible expansion of the scope'' of the section 115 license because many of the services in such bundles ''have nothing whatsoever to do with distributing phonorecords, and the services in their respective entireties are relieved of the statutory obligation to pay royalties based on specific individual music transactions.'' *Id.*

The Judges do not agree with Mr. Clarida's assertion that the ''primary purpose'' of the providers of the new classes of ''bundled'' activity is not to make phonorecords and distribute them to the public for private use. The fact that other services are bundled with that service does not cause any one of the bundled services to have primacy over any other of the bundled services. In that regard, Mr. Clarida does not propose a method by which the Judges could rank the ''purposes'' of the several bundled services.

Mr. Clarida also opposes the calculation of royalties proposed in § 385.20(a), which would allow music bundle providers the option of paying for the ''components'' under the rates set forth in Subpart A of the proposed regulations or under the formula set forth in Subpart C of the proposal and would relieve those who distribute such bundles from paying for each phonorecord made or distributed. Clarida Comments at 7. Mr. Clarida also opposes the calculation of royalties under proposed § 385.22 for the other proposed Subpart C activities, asserting that such calculation ''is utterly without support in the statute.'' *Id.* In particular, Mr. Clarida objects to the portion of the proposed royalty formula that would allow, for instance, mixed service bundles and locker services to determine a ''constructive number of plays,'' even though the actual number of uses are known, and then apply that number against ''a formula apportioning aggregate revenue from the service.'' *Id.* The main problem with this approach, in his view, is that information regarding the number of plays is not simply reported and paid for accordingly. *Id.*

Judges' Response

Despite Mr. Clarida's objections, none of the challenged Subpart C provisions on their face appear to be contrary to the section 115 license. As Mr. Clarida acknowledges, under the proposed regulations, the copyright owners would receive royalties for the musical works bundled with the other services. Mr. Clarida therefore is objecting to the ''reasonableness'' of those rates. As noted *supra,* since he and Gear were not ''participants'' to this proceeding, they cannot challenge the reasonableness of the rates and terms of the settlement.

Therefore, the Judges adopt the settlement as proposed with the exception of the provisions that the Register found to be contrary to law.

List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend Part 385 of Chapter III of title 37 of the Code of Federal Regulations as follows:

PART 385—RATES AND TERMS FOR USE OF MUSICAL WORKS UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

§ 385.4 [Amended]

■ 2. Section 385.4 is amended by removing ''(201.19(e)(7)(i)'' and adding ''§ 201.19(e)(7)(i)'' in its place.

■ 3. Revise the heading of Subpart B to read as follows:

Subpart B—Interactive Streaming and Limited Downloads

■ 4. Section 385.10 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 385.10 General.

* * * * *

(b) *Legal compliance.* A licensee that, pursuant to 17 U.S.C. 115, makes or authorizes interactive streams or limited downloads of musical works through subscription or nonsubscription digital music services shall comply with the requirements of that section, the rates and terms of this subpart, and any other applicable regulations, with respect to such musical works and uses licensed pursuant to 17 U.S.C. 115.

(c) *Interpretation.* This subpart is intended only to set rates and terms for situations in which the exclusive rights of a copyright owner are implicated and a compulsory license pursuant to 17 U.S.C. 115 is obtained. Neither this subpart nor the act of obtaining a license under 17 U.S.C. 115 is intended to express or imply any conclusion as to the circumstances in which any of the exclusive rights of a copyright owner are implicated or a license, including a compulsory license pursuant to 17 U.S.C. 115, must be obtained.

■ 5. Section 385.11 is amended as follows:

■ a. By adding in alphabetical order definitions for ''Affiliate'', ''Applicable consideration'', and ''GAAP'';

■ b. In paragraphs (1) and (2) of the definition of ''Limited download'', by adding ''provider'' after ''service'';

■ c. In the definition of ''Offering'', by removing ''service's'' and adding ''service provider's'' in its place, and by adding ''provider'' after ''service'';

■ d. By removing the definition of ''Publication date'';

■ e. In the definition of ''Relevant page'', by adding ''provider'' after ''service'' in the first sentence and by removing ''users for limited downloads or interactive streams'' and adding ''users for licensed activity'' in its place in the second sentence;

■ f. By revising the term ''Service'', to read ''Service provider'';

■ g. Amend the definition of ''Service revenue'' by:

■ i. In paragraph (1) introductory text, by removing ''U.S. Generally Accepted Accounting Principles'' and adding ''GAAP'' in its place;

■ ii. In paragraphs (1)(i) and (ii), by adding ''provider'' after ''service'';

■ iii. In paragraph (1)(iii), by adding ''provider'' after ''by the service'';

''participant'' had raised such objections, the Judges would have considered those arguments, including any arguments as to any alleged failure of the zero royalty rates, combined with the associated promotional benefits, to provide reasonable economic compensation to a copyright owner under section 115 of the Copyright Act. However, Mr. Clarida and Gear chose not to participate and therefore they cannot make any cognizable argument as to the reasonableness of the combination of the proposed zero royalty rates and the associated promotional benefits.

■ iv. In paragraph (2)(i), by removing ''service'' and adding ''service provider'' in its place each place it appears; and
■ v. In paragraph (5) introductory text, by removing ''In connection with such a bundle, if a record company providing sound recording rights to the service'' and by removing paragraphs (5)(i) and (ii).

The additions read as follows:

§ 385.11 Definitions.

* * * * *

Affiliate means an entity controlling, controlled by, or under common control with another entity, except that an affiliate of a record company shall not include a copyright owner of musical works to the extent it is engaging in business as to musical works.

Applicable consideration means anything of value given for the identified rights to undertake the licensed activity, including, without limitation, ownership equity, monetary advances, barter or any other monetary and/or nonmonetary consideration, whether such consideration is conveyed via a single agreement, multiple agreements and/or agreements that do not themselves authorize the licensed activity but nevertheless provide consideration for the identified rights to undertake the licensed activity, and including any such value given to an affiliate of a record company for such rights to undertake the licensed activity. For the avoidance of doubt, value given to a copyright owner of musical works that is controlling, controlled by, or under common control with a record company for rights to undertake the licensed activity shall not be considered value given to the record company. Notwithstanding the foregoing, applicable consideration shall not include in-kind promotional consideration given to a record company (or affiliate thereof) that is used to promote the sale or paid use of sound recordings embodying musical works or the paid use of music services through which sound recordings embodying musical works are available where such in-kind promotional consideration is given in connection with a use that qualifies for licensing under 17 U.S.C. 115.

GAAP means U.S. Generally Accepted Accounting Principles, except that if the U.S. Securities and Exchange Commission permits or requires entities with securities that are publicly traded in the U.S. to employ International Financial Reporting Standards, as issued by the International Accounting Standards Board, or as accepted by the Securities and Exchange Commission if different from that issued by the International Accounting Standards Board, in lieu of Generally Accepted Accounting Principles, then an entity may employ International Financial Reporting Standards as ''GAAP'' for purposes of this subpart.

* * * * *

■ 6. Section 385.12 is amended as follows:
■ a. In paragraph (b) introductory text, by removing ''offering.'' and adding ''offering taking into consideration service revenue and expenses associated with such offering.'' in its place in the second sentence;
■ b. In paragraph (b)(1) introductory text, by removing ''Service.'' and adding ''Offering.'' in its place and by adding ''provider'' after ''service'';
■ c. In paragraph (b)(1)(i), by removing ''revenue as'' and adding ''revenue associated with the relevant offering as'' in its place;
■ d. In paragraph (b)(2):
■ i. By removing ''service, subtract'' and adding ''service provider, subtract'' in its place in the first sentence;
■ ii. By removing ''by the service'' in the first sentence;
■ iii. By removing ''While'' and adding ''Although'' in its place in the second sentence;
■ iv. By removing ''under its agreements with performing rights societies as defined in 17 U.S.C. 101'' in the second sentence; and
■ v. By removing ''In the latter case,'' and adding ''In the case where the service is also engaging in the public performance of musical works that does not constitute licensed activity,'' in its place in the third sentence;
■ e. In paragraph (b)(3) introductory text, by removing ''This is'' and adding ''The payable royalty pool is'' in its place and by adding ''provider'' after ''service'';
■ f. In paragraph (b)(4), by removing ''used by the service'' and adding ''used by the service provider'' in its place each place it appears, by removing ''on or after October 1, 2010'' in the fourth sentence, and by removing ''if the service is'' and adding ''if the service provider is'' in the fifth sentence;
■ g. By revising paragraph (c); and
■ h. In paragraph (d) introductory text, by removing ''For licensed activity on or after October 1, 2010, for'' and adding ''For'' in its place.

The revision reads as follows:

§ 385.12 Calculation of royalty payments in general.

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(c) *Percentage of service revenue.* The percentage of service revenue applicable under paragraph (b) of this section is 10.5%.

* * * * *

■ 7. Section 385.13 is amended as follows:
■ a. In paragraphs (a)(1) through (5), by removing ''§ 385.12(b)(1)'' and adding ''§ 385.12(b)(1)(ii)'' in its place each place it appears, and by removing ''§ 385.12(b)(3)'' and adding ''§ 385.12(b)(3)(ii)'' in its place each place it appears;
■ b. In paragraph (a)(4):
■ i. By adding ''providing licensed activity that is'' before ''made available to end users'' in the first sentence;
■ ii. By adding ''(including products or services subject to other subparts)'' before ''as part of a single transaction'' in the first sentence;
■ iii. By removing ''subscription service separate'' and adding ''subscription service providing licensed activity separate'' in its place in the first sentence; and
■ iv. By removing ''subscription service for a single price'' and adding ''subscription service providing licensed activity for a single price'' in its place in the first sentence;
■ c. By revising paragraphs (b) and (c);
■ d. By redesignating paragraph (d) as paragraph (e);
■ e. By adding a new paragraph (d); and
■ f. In newly redesignated paragraph (e):
■ i. By removing ''the service shall for the relevant offering calculate its'' and adding ''the'' in its place in the first sentence; and
■ ii. By adding ''shall be calculated,'' before ''taking into account'' in the first sentence.

The revisions and additions read as follows:

§ 385.13 Minimum royalty rates and subscriber-based royalty floors for specific types of services.

* * * * *

(b) *Computation of subminimum I.* For purposes of paragraphs (a)(2), (3), and (4) of this section, subminimum I for an accounting period means the aggregate of the following with respect to all sound recordings of musical works used in the relevant offering of the service provider during the accounting period—

(1) In cases in which the record company is the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams or limited downloads of a sound recording through the third-party service together with the right to reproduce and distribute the musical work embodied therein, 17.36% of the total amount expensed by the service provider or any of its affiliates in accordance with

GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(2) In cases in which the record company is not the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams or limited downloads of a sound recording through the third-party service without the right to reproduce and distribute the musical work embodied therein, 21% of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(c) *Computation of subminimum II.* For purposes of paragraphs (a)(1) and (5) of this section, subminimum II for an accounting period means the aggregate of the following with respect to all sound recordings of musical works used in the relevant offering of the service provider during the accounting period—

(1) In cases in which the record company is the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams and limited downloads of a sound recording through the third-party service together with the right to reproduce and distribute the musical work embodied therein, 18% of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(2) In cases in which the record company is not the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams or limited downloads of a sound recording through the third-party service without the right to reproduce and distribute the musical work embodied therein, 22% of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(d) *Payments made by third parties.* If a record company providing sound recording rights to the service provider for a licensed activity—

(1) Recognizes revenue (in accordance with GAAP, and including for the avoidance of doubt all applicable consideration with respect to such rights for the accounting period, regardless of the form or timing of payment) from a person or entity other than the service provider providing the licensed activity and its affiliates, and

(2) Such revenue is received, in the context of the transactions involved, as applicable consideration for such rights,

(3) Then such revenue shall be added to the amounts expensed by the service provider solely for purposes of paragraphs(b)(1), (b)(2), (c)(1), or (c)(2) of this section, as applicable, if not already included in such expensed amounts. Where the service provider is the licensee, if the service provider provides the record company all information necessary for the record company to determine whether additional royalties are payable by the service provider hereunder as a result of revenue recognized from a person or entity other than the service provider as described in the immediately preceding sentence, then the record company shall provide such further information as necessary for the service provider to calculate the additional royalties and indemnify the service provider for such additional royalties. The sole obligation of the record company shall be to pay the licensee such additional royalties if actually payable as royalties hereunder; provided, however, that this shall not affect any otherwise existing right or remedy of the copyright owner nor diminish the licensee's obligations to the copyright owner.

* * * * *

■ 8. Section 385.14 is amended as follows:

■ a. In paragraph (a)(1)(iii), by removing ''service'' and adding ''service provider'' in its place each place it appears;

■ b. In paragraph (a)(1)(iii)(A), by removing ''commencing on or after October 1, 2010, except'' and adding ''other than'' in its place;

■ c. In paragraph (a)(3):

■ i. By removing ''the service shall provide'' and adding ''the service provider shall provide'' in its place in the first sentence;

■ ii. By removing ''the service shall have'' and adding ''the service provider shall have'' in its place in the first sentence;

■ iii. By removing ''service does not provide'' and adding ''service provider does not provide'' in its place in the second sentence; and

■ iv. By removing ''the service (but'' and adding ''the service provider (but'' in its place in the second sentence;

■ d. By revising paragraph (b)(1);

■ e. In paragraph (b)(4), by removing ''the service, and not'' and adding ''the service provider, and not'' in its place in the second sentence; and

■ f. By revising paragraph (d).

The revisions read as follows:

§ 385.14 Promotional royalty rate.

* * * * *

(b) * * *

(1) No applicable consideration for making or authorizing the relevant interactive streams or limited downloads is received by the record company, any of its affiliates, or any other person or entity acting on behalf of or in lieu of the record company, except for in-kind promotional consideration given to a record company (or affiliate thereof) that is used to promote the sale or paid use of sound recordings or the paid use of music services through which sound recordings are available;

* * * * *

(d) *Interactive streaming of clips.* In addition to those in paragraph (a) of this section, the provisions of this paragraph (d) apply to interactive streaming conducted or authorized by record companies under the promotional royalty rate of segments of sound recordings of musical works with a playing time that does not exceed 90 seconds. Such interactive streams may be made or authorized by a record company under the promotional royalty rate without any of the temporal limitations set forth in paragraphs (b) and (c) of this section (but subject to the other conditions of paragraphs (b) and (c) of this section, as applicable). For clarity, this paragraph (d) is strictly limited to the uses described herein and shall not be construed as permitting the creation or use of an excerpt of a musical work in violation of 17 U.S.C. 106(2) or 115(a)(2) or any other right of a musical work owner.

■ 9. Add Subpart C to read as follows:

Subpart C—Limited Offerings, Mixed Service Bundles, Music Bundles, Paid Locker Services and Purchased Content Locker Services

Sec.
385.20 General.
385.21 Definitions.
385.22 Calculation of royalty payments in general.
385.23 Royalty rates and subscriber-based royalty floors for specific types of services.
385.24 Free trial periods.
385.25 Reproduction and distribution rights covered.

385.26 Effect of rates.

Subpart C—Limited Offerings, Mixed Service Bundles, Music Bundles, Paid Locker Services and Purchased Content Locker Services

§ 385.20 General.

(a) *Scope.* This subpart establishes rates and terms of royalty payments for certain reproductions or distributions of musical works through limited offerings, mixed service bundles, music bundles, paid locker services and purchased content locker services provided in accordance with the provisions of 17 U.S.C. 115. For the avoidance of doubt, to the extent that product configurations for which rates are specified in subpart A of this part are included within licensed subpart C activity, as defined in § 385.21, the rates specified in subpart A of this part shall not apply, except that in the case of a music bundle the compulsory licensee may elect to pay royalties for the music bundle pursuant to subpart C of this part or for the components of the bundle pursuant to subpart A of this part.

(b) *Legal compliance.* A licensee that, pursuant to 17 U.S.C. 115, makes or authorizes reproduction or distribution of musical works in limited offerings, mixed service bundles, music bundles, paid locker services or purchased content locker services shall comply with the requirements of that section, the rates and terms of this subpart, and any other applicable regulations, with respect to such musical works and uses licensed pursuant to 17 U.S.C. 115.

(c) *Interpretation.* This subpart is intended only to set rates and terms for situations in which the exclusive rights of a copyright owner are implicated and a compulsory license pursuant to 17 U.S.C. 115 is obtained. Neither this subpart nor the act of obtaining a license under 17 U.S.C. 115 is intended to express or imply any conclusion as to the circumstances in which any of the exclusive rights of a copyright owner are implicated or a license, including a compulsory license pursuant to 17 U.S.C. 115, must be obtained.

§ 385.21 Definitions.

For purposes of this subpart, the following definitions shall apply:

Affiliate shall have the meaning given in § 385.11.

Applicable consideration shall have the meaning given in § 385.11, except that for purposes of this subpart C, references in the definition of ''Applicable consideration'' in § 385.11 to licensed activity shall mean licensed subpart C activity, as defined in this section.

Free trial royalty rate means the statutory royalty rate of zero in the case of certain free trial periods, as provided in § 385.24.

GAAP shall have the meaning given in § 385.11.

Interactive stream shall have the meaning given in § 385.11.

Licensee shall have the meaning given in § 385.11.

Licensed subpart C activity means, referring to subpart C of this part—

(1) In the case of a limited offering, the applicable interactive streams or limited downloads;

(2) In the case of a locker service, the applicable interactive streams, permanent digital downloads, restricted downloads or ringtones;

(3) In the case of a music bundle, the applicable reproduction or distribution of a physical phonorecord, permanent digital download or ringtone; and

(4) In the case of a mixed service bundle, the applicable—

(i) Permanent digital downloads;

(ii) Ringtones;

(iii) To the extent a limited offering is included in a mixed service bundle, interactive streams or limited downloads; or

(iv) To the extent a locker service is included in a mixed service bundle, interactive streams, permanent digital downloads, restricted downloads or ringtones.

Limited download shall have the meaning given in § 385.11.

Limited offering means a subscription service providing interactive streams or limited downloads where—

(1) An end user is not provided the opportunity to listen to a particular sound recording chosen by the end user at a time chosen by the end user (i.e., the service does not provide interactive streams of individual recordings that are on-demand, and any limited downloads are rendered only as part of programs rather than as individual recordings that are on-demand); or

(2) The particular sound recordings available to the end user over a period of time are substantially limited relative to services in the marketplace providing access to a comprehensive catalog of recordings (e.g., a service limited to a particular genre, or permitting interactive streaming only from a monthly playlist consisting of a limited set of recordings).

Locker service means a service providing access to sound recordings of musical works in the form of interactive streams, permanent digital downloads, restricted downloads or ringtones, where the service has reasonably determined that phonorecords of the applicable sound recordings have been purchased by the end user or are otherwise in the possession of the end user prior to the end user's first request to access such sound recordings by means of the service. The term locker service does not extend to any part of a service otherwise meeting this definition as to which a license is not obtained for the applicable reproductions and distributions of musical works.

Mixed service bundle means an offering of one or more of permanent digital downloads, ringtones, locker services or limited offerings, together with one or more of non-music services (e.g., Internet access service, mobile phone service) or non-music products (e.g., a device such as a phone) of more than token value, that is provided to users as part of one transaction without pricing for the music services or music products separate from the whole offering.

Music bundle means an offering of two or more of physical phonorecords, permanent digital downloads or ringtones provided to users as part of one transaction (e.g., download plus ringtone, CD plus downloads). A music bundle must contain at least two different product configurations and cannot be combined with any other offering containing licensed activity under subpart B of this part or subpart C of this part.

(1) In the case of music bundles containing one or more physical phonorecords, the physical phonorecord component of the music bundle must be sold under a single catalog number, and the musical works embodied in the digital phonorecord delivery configurations in the music bundle must be the same as, or a subset of, the musical works embodied in the physical phonorecords; provided that when the music bundle contains a set of digital phonorecord deliveries sold by the same record company under substantially the same title as the physical phonorecord (e.g., a corresponding digital album), up to 5 sound recordings of musical works that are included in the stand-alone version of such set of digital phonorecord deliveries but are not included on the physical phonorecord may be included among the digital phonorecord deliveries in the music bundle. In addition, the seller must permanently part with possession of the physical phonorecord or phonorecords sold as part of the music bundle.

(2) In the case of music bundles composed solely of digital phonorecord deliveries, the number of digital phonorecord deliveries in either configuration cannot exceed 20, and the musical works embodied in each

configuration in the music bundle must be the same as, or a subset of, the musical works embodied in the configuration containing the most musical works.

Paid locker service means a locker service that is a subscription service.

Permanent digital download shall have the meaning given in § 385.2.

Purchased content locker service means a locker service made available to end-user purchasers of permanent digital downloads, ringtones or physical phonorecords at no incremental charge above the otherwise applicable purchase price of the permanent digital downloads, ringtones or physical phonorecords, with respect to the sound recordings embodied in permanent digital downloads or ringtones or physical phonorecords purchased from a qualifying seller as described in paragraph (1) of this definition of ''Purchased content locker service,'' whereby the locker service enables the purchaser to engage in one or both of the qualifying activities indentified in paragraph (2) of this definition of ''Purchased content locker service.'' In addition, in the case of a locker service made available to end-user purchasers of physical phonorecords, the seller must permanently part with possession of the physical phonorecords.

(1) A qualifying seller for purposes of this definition of ''purchased content locker service'' is the same entity operating such locker service, one of its affiliates or predecessors, or—

(i) In the case of permanent digital downloads or ringtones, a seller having another legitimate connection to the locker service provider set forth in one or more written agreements (including that the locker service and permanent digital downloads or ringtones are offered through the same third party); or

(ii) In the case of physical phonorecords, a seller having an agreement with—

(A) The locker service provider whereby such parties establish an integrated offer that creates a consumer experience commensurate with having the same service both sell the physical phonorecord and offer the locker service; or

(B) A service provider that also has an agreement with the entity offering the locker service, where pursuant to those agreements the service provider has established an integrated offer that creates a consumer experience commensurate with having the same service both sell the physical phonorecord and offer the locker service.

(2) Qualifying activity for purposes of this definition of ''purchased content locker service'' is enabling the purchaser to—

(i) Receive one or more additional phonorecords of such purchased sound recordings of musical works in the form of permanent digital downloads or ringtones at the time of purchase, or

(ii) Subsequently access such purchased sound recordings of musical works in the form of interactive streams, additional permanent digital downloads, restricted downloads or ringtones.

Record company shall have the meaning given in § 385.11.

Restricted download means a digital phonorecord delivery distributed in the form of a download that may not be retained and played on a permanent basis. The term restricted download includes a limited download.

Ringtone shall have the meaning given in § 385.2.

Service provider shall have the meaning given in § 385.11, except that for purposes of this subpart references in the definition of ''Service provider'' in § 385.11 to licensed activity and service revenue shall mean licensed subpart C activity, as defined in this section, and subpart C service revenue, as defined in this section, respectively.

Subpart C offering means, referring to subpart C of this part, a service provider's offering of licensed subpart C activity, as defined in this section, that is subject to a particular rate set forth in § 385.23(a) (e.g., a particular subscription plan available through the service provider).

Subpart C relevant page means, referring to subpart C of this part, a page (including a Web page, screen or display) from which licensed subpart C activity, as defined in this section, offered by a service provider is directly available to end users, but only where the offering of licensed subpart C activity, as defined in this section, and content that directly relates to the offering of licensed subpart C activity, as defined in this section, (e.g., an image of the artist or artwork closely associated with such offering, artist or album information, reviews of such offering, credits and music player controls) comprises 75% or more of the space on that page, excluding any space occupied by advertising. A licensed subpart C activity, as defined in this section, is directly available to end users from a page if sound recordings of musical works can be accessed by end users for licensed subpart C activity, as defined in this section, from such page (in most cases this will be the page where the transmission takes place).

Subpart C service revenue. (1) Subject to paragraphs (2) through (6) of the definition of ''Subpart C service revenue,'' as defined in this section, and subject to GAAP, subpart C service revenue shall mean, referring to subpart C of this part, the following:

(i) All revenue recognized by the service provider from end users from the provision of licensed subpart C activity, as defined in this section;

(ii) All revenue recognized by the service provider by way of sponsorship and commissions as a result of the inclusion of third-party ''in-stream'' or ''in-download'' advertising as part of licensed subpart C activity, as defined in this section, (i.e., advertising placed immediately at the start, end or during the actual delivery, by way of transmissions of a musical work that constitute licensed subpart C activity, as defined in this section); and

(iii) All revenue recognized by the service provider, including by way of sponsorship and commissions, as a result of the placement of third-party advertising on a subpart C relevant page, as defined in this section, of the service or on any page that directly follows such subpart C relevant page, as defined in this section, leading up to and including the transmission of a musical work that constitutes licensed subpart C activity, as defined in this section; provided that, in the case where more than one service is actually available to end users from a subpart C relevant page, as defined in this section, any advertising revenue shall be allocated between such services on the basis of the relative amounts of the page they occupy.

(2) In each of the cases identified in paragraph (1) of the definition of ''Subpart C service revenue,'' of this section such revenue shall, for the avoidance of doubt,

(i) Include any such revenue recognized by the service provider, or if not recognized by the service provider, by any associate, affiliate, agent or representative of such service provider in lieu of its being recognized by the service provider;

(ii) Include the value of any barter or other nonmonetary consideration;

(iii) Not be reduced by credit card commissions or similar payment process charges; and

(iv) Except as expressly set forth in this subpart, not be subject to any other deduction or set-off other than refunds to end users for licensed subpart C activity, as defined in this section, that they were unable to use due to technical faults in the licensed subpart C activity, as defined in this section, or other bona fide refunds or credits issued to end users in the ordinary course of business.

(3) In each of the cases identified in paragraph (1) of the definition of ''Subpart C service revenue'' of this section, such revenue shall, for the avoidance of doubt, exclude revenue derived solely in connection with services and activities other than licensed subpart C activity, as defined in this section, provided that advertising or sponsorship revenue shall be treated as provided in paragraphs (2) and (4) of the definition of ''Subpart C service revenue'' of this section. By way of example, the following kinds of revenue shall be excluded:

(i) Revenue derived from non-music voice, content and text services;

(ii) Revenue derived from other non-music products and services (including search services, sponsored searches and click-through commissions);

(iii) Revenue generated from the sale of actual locker service storage space to the extent that such storage space is sold at a separate retail price;

(iv) In the case of a locker service, revenue derived from the sale of permanent digital downloads or ringtones; and

(v) Revenue derived from other music or music-related products and services that are not or do not include licensed subpart C activity, as defined in this section.

(4) For purposes of paragraph (1) of the definition of ''Subpart C service revenue'' of this section, advertising or sponsorship revenue shall be reduced by the actual cost of obtaining such revenue, not to exceed 15%.

(5) In the case of a mixed service bundle, the revenue deemed to be recognized from end users for the service for the purpose of the definition in paragraph (1) of the definition of ''Subpart C service revenue'' of this section shall be the greater of—

(i) The revenue recognized from end users for the mixed service bundle less the standalone published price for end users for each of the non-music product or non-music service components of the bundle; provided that, if there is no such standalone published price for a non-music component of the bundle, then the average standalone published price for end users for the most closely comparable non-music product or non-music service in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used; and

(ii) Either—

(A) In the case of a mixed service bundle that either has 750,000 subscribers or other registered users, or is reasonably expected to have 750,000 subscribers or other registered users within 1 year after commencement of the mixed service bundle, 40% of the standalone published price of the licensed music component of the bundle (i.e., the permanent digital downloads, ringtones, locker service or limited offering); provided that, if there is no such standalone published price for the licensed music component of the bundle, then the average standalone published price for end users for the most closely comparable licensed music component in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used; and further provided that in any case in which royalties were paid based on this paragraph due to a reasonable expectation of reaching 750,000 subscribers or other registered users within 1 year after commencement of the mixed service bundle and that does not actually happen, applicable payments shall, in the accounting period next following the end of such 1-year period, retroactively be adjusted as if paragraph (5)(ii)(B) of the definition of ''Subpart C service revenue'' of this section applied; or

(B) Otherwise, 50% of the standalone published price of the licensed music component of the bundle (i.e., the permanent digital downloads, ringtones, locker service or limited offering); provided that, if there is no such standalone published price for the licensed music component of the bundle, then the average standalone published price for end users for the most closely comparable licensed music component in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used.

(6) In the case of a music bundle containing a physical phonorecord, where the music bundle is distributed by a record company for resale and the record company is the compulsory licensee—

(i) Service revenue shall be 150% of the record company's wholesale revenue from the music bundle; and

(ii) The times at which distribution and revenue recognition are deemed to occur shall be in accordance with § 201.19 of this title.

Subscription service means a digital music service for which end users are required to pay a fee to access the service for defined subscription periods of 3 years or less (in contrast to, for example, a service where the basic charge to users is a payment per download or per play), whether such payment is made for access to the service on a standalone basis or as part of a bundle with one or more other products or services, and including any use of such a service on a trial basis without charge as described in § 385.24.

§ 385.22 Calculation of royalty payments in general.

(a) *Applicable royalty.* Licensees that make or authorize licensed subpart C activity, as defined in § 385.21, pursuant to 17 U.S.C. 115 shall pay royalties therefor that are calculated as provided in this section, subject to the royalty rates and subscriber-based royalty floors for specific types of services provided in § 385.23, except as provided for certain free trial periods in § 385.24.

(b) *Rate calculation methodology.* Royalty payments for licensed subpart C activity, as defined in § 385.21, shall be calculated as provided in this paragraph (b). If a service provides different subpart C offerings, as defined in § 385.21, royalties must be separately calculated with respect to each such subpart C offering, as defined in § 385.21, taking into consideration service revenue and expenses associated with such offering. Uses subject to the free trial royalty rate shall be excluded from the calculation of royalties due, as further described in this section and § 385.23.

(1) *Step 1:* Calculate the All-In Royalty for the Subpart C Offering, as Defined in § 385.21. For each accounting period, the all-in royalty for each subpart C offering, as defined in § 385.21, of the service provider is the greater of:

(i) The applicable percentage of subpart C service revenue, as defined in § 385.21, associated with the relevant offering as set forth in § 385.23(a) (excluding any subpart C service revenue, as defined in § 385.21, derived solely from licensed subpart C activity, as defined in § 385.21, uses subject to the free trial royalty rate); and

(ii) The minimum specified in § 385.23(a) for the subpart C offering, as defined in § 385.21, involved.

(2) *Step 2:* Subtract applicable performance royalties to determine the payable royalty pool, which is the amount payable for the reproduction and distribution of all musical works used by the service provider by virtue of its licensed subpart C activity, as defined in § 385.21, for a particular subpart C offering, as defined in § 385.21, during the accounting period. From the amount determined in step 1 in paragraph (b)(1) of this section, for each subpart C offering, as defined in § 385.21, of the service provider, subtract the total amount of royalties for public performance of musical works that has been or will be expensed

pursuant to public performance licenses in connection with uses of musical works through such subpart C offering, as defined in § 385.21, during the accounting period that constitute licensed subpart C activity, as defined in § 385.21, (other than licensed subpart C activity, as defined in § 385.21, subject to the free trial royalty rate), or in connection with previewing of such subpart C offering, as defined in § 385.21, during the accounting period. Although this amount may be the total of the payments with respect to the service for that subpart C offering, as defined in § 385.21, for the accounting period, it will be less than the total of such public performance payments if the service is also engaging in public performance of musical works that does not constitute licensed subpart C activity, as defined in § 385.21, or previewing of such licensed subpart C activity, as defined in § 385.21. In the case where the service is also engaging in the public performance of musical works that does not constitute licensed subpart C activity, as defined in § 385.21, the amount to be subtracted for public performance payments shall be the amount of such payments allocable to licensed subpart C activity, as defined in § 385.21, uses (other than free trial royalty rate uses), and previewing of such uses, in connection with the relevant subpart C offering, as defined in § 385.21, as determined in relation to all uses of musical works for which the public performance payments are made for the accounting period. Such allocation shall be made on the basis of plays of musical works or, where per-play information is unavailable due to bona fide technical limitations as described in step 3 in paragraph (b)(3) of this section, using the same alternative methodology as provided in step 3 in paragraph (b)(3) of this section.

(3) *Step 3:* Calculate the Per-Work Royalty Allocation for Each Relevant Work. This is the amount payable for the reproduction and distribution of each musical work used by the service provider by virtue of its licensed subpart C activity, as defined in § 385.21, through a particular subpart C offering, as defined in § 385.21, during the accounting period. To determine this amount, the result determined in step 2 in paragraph (b)(2) of this section must be allocated to each musical work used through the subpart C offering, as defined in § 385.21. The allocation shall be accomplished as follows:

(i) In the case of limited offerings (but not limited offerings that are part of mixed service bundles), by dividing the payable royalty pool determined in step 2 in paragraph (b)(2) of this section for such offering by the total number of plays of all musical works through such offering during the accounting period (other than free trial royalty rate plays) to yield a per-play allocation, and multiplying that result by the number of plays of each musical work (other than free trial royalty rate plays) through the offering during the accounting period. For purposes of determining the per-work royalty allocation in all calculations under this step 3 only (i.e., after the payable royalty pool has been determined), for sound recordings of musical works with a playing time of over 5 minutes, each play shall be counted as provided in paragraph (c) of this section. Notwithstanding the foregoing, if the service provider is not capable of tracking play information due to bona fide limitations of the available technology for services of that nature or of devices usable with the service, the per-work royalty allocation may instead be accomplished in a manner consistent with the methodology used by the service provider for making royalty payment allocations for the use of individual sound recordings.

(ii) In the case of mixed service bundles and locker services, by—

(A) Determining a constructive number of plays of all licensed musical works that is the sum of the total number of interactive streams of all licensed musical works made through such offering during the accounting period (other than free trial royalty rate interactive streams), plus the total number of plays of restricted downloads of all licensed musical works made through such offering during the accounting period as to which the service provider tracks plays (other than free trial royalty rate restricted downloads), plus 5 times the total number of downloads of all licensed musical works made through such offering during the accounting period as to which the service provider does not track plays (other than free trial royalty rate downloads);

(B) Determining a constructive per-play allocation that is the payable royalty pool determined in step 2 of paragraph (b)(2) of this section for such offering divided by the constructive number of plays of all licensed musical works determined in paragraph (b)(3)(ii)(A) of this section;

(C) For each licensed musical work, determining a constructive number of plays of that musical work that is the sum of the total number of interactive streams of such licensed musical work made through such offering during the accounting period (other than free trial royalty rate interactive streams), plus the total number of plays of restricted downloads of such licensed musical work made through such offering during the accounting period as to which the service provider tracks plays (other than free trial royalty rate restricted downloads), plus 5 times the total number of downloads of such licensed musical work made through such offering during the accounting period as to which the service provider does not track plays (other than free trial royalty rate downloads); and

(D) For each licensed musical work, determining the per-work royalty allocation by multiplying the constructive per-play allocation determined in paragraph (b)(3)(ii)(B) of this section by the constructive number of plays of that musical work determined in paragraph (b)(3)(ii)(C) of this section.

(E) Notwithstanding the foregoing, if a service provider offers both a paid locker service and a purchased content locker service, and with respect to the purchased content locker service there is no subpart C service revenue, as defined in § 385.21, and the applicable subminimum is zero dollars, then the service provider shall be permitted to include within the calculation of constructive plays under paragraphs (b)(3)(ii)(A) and (C) of this section for the paid locker service, the licensed subpart C activity, as defined in § 385.21, made through the purchased content locker service (i.e., the total number of interactive streams of all licensed musical works made through the purchased content locker service during the accounting period (other than free trial royalty rate interactive streams), plus the total number of plays of restricted downloads of all licensed musical works made through the purchased content locker service during the accounting period as to which the service provider tracks plays (other than free trial royalty rate restricted downloads), plus 5 times the total number of downloads of all licensed musical works made through the purchased content locker service during the accounting period as to which the service provider does not track plays (other than free trial royalty rate downloads)); provided that the relevant licensed subpart C activity, as defined in § 385.21, made through the purchased content locker service is similarly included within the play calculation for the paid locker service for the corresponding sound recording rights.

(iii) In the case of music bundles, by—

(A) Allocating the payable royalty pool determined in step 2 of paragraph (b)(2) of this section to separate pools for each type of product configuration

included in the music bundle (e.g., CD, permanent digital download, ringtone) in accordance with the ratios that the standalone published prices of the products that are included in the music bundle bear to each other; provided that, if there is no such standalone published price for such a product, then the average standalone published price for end users for the most closely comparable product in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used; and

(B) Allocating the product configuration pools determined in paragraph (b)(3)(iii)(A) of this section to individual musical works by dividing each such pool by the total number of sound recordings of musical works included in products of that configuration in the music bundle.

(c) *Overtime adjustment.* For purposes of the calculations in step 3 of paragraph (b)(3)(i) of this section only, for sound recordings of musical works with a playing time of over 5 minutes, adjust the number of plays as follows:

(1) 5:01 to 6:00 minutes—Each play = 1.2 plays

(2) 6:01 to 7:00 minutes—Each play = 1.4 plays

(3) 7:01 to 8:00 minutes—Each play = 1.6 plays

(4) 8:01 to 9:00 minutes—Each play = 1.8 plays

(5) 9:01 to 10:00 minutes—Each play = 2.0 plays

(6) For playing times of greater than 10 minutes, continue to add .2 plays for each additional minute or fraction thereof.

§ 385.23 Royalty rates and subscriber-based royalty floors for specific types of services.

(a) *In general.* The following royalty rates and subscriber-based royalty floors shall apply to the following types of licensed subpart C activity, as defined in § 385.21:

(1) *Mixed service bundle.* In the case of a mixed service bundle, the percentage of subpart C service revenue, as defined in § 385.21, applicable in step 1 of § 385.22(b)(1)(i) is 11.35%. The minimum for use in step 1 of § 385.22(b)(1)(ii) is the appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to § 385.23(b)(1) is 17.36%, and the sound recording-only percentage applicable to § 385.23(b)(2) is 21%.

(2) *Music bundle.* In the case of a music bundle, the percentage of subpart C service revenue, as defined in § 385.21, applicable in step 1 of § 385.22(b)(1)(i) is 11.35%. The minimum for use in step 1 of § 385.22(b)(1)(ii) is the appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to § 385.23(b)(1) and (3) is 17.36%, and the sound recording-only percentage applicable to § 385.23(b)(2) is 21%.

(3) *Limited offering.* In the case of a limited offering, the percentage of subpart C service revenue, as defined in § 385.21, applicable in step 1 of § 385.22(b)(1)(i) is 10.5%. The minimum for use in step 1 of § 385.22(b)(1)(ii) is the greater of—

(i) The appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to § 385.23(b)(1) is 17.36%, and the sound recording-only percentage applicable to § 385.23(b)(2) is 21%; and

(ii) The aggregate amount of 18 cents per subscriber per month.

(4) *Paid locker service.* In the case of a paid locker service, the percentage of subpart C service revenue, as defined in § 385.21, applicable in step 1 of § 385.22(b)(1)(i) is 12%. The minimum for use in step 1 of § 385.22(b)(1)(ii) is the greater of—

(i) The appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to § 385.23(b)(1) is 17.11%, and the sound recording-only percentage applicable to § 385.23(b)(2) is 20.65%; and

(ii) The aggregate amount of 17 cents per subscriber per month.

(5) *Purchased content locker service.* In the case of a purchased content locker service, the percentage of subpart C service revenue, as defined in § 385.21, applicable in step 1 of § 385.22(b)(1)(i) is 12%. For the avoidance of doubt, paragraph (1)(i) of the definition of ''Subpart C service revenue,'' as defined in § 385.21, shall not apply. The minimum for use in step 1 in § 385.22(b)(1)(ii) is the appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to § 385.23(b)(1) is 18%, and the sound recording-only percentage applicable to § 385.23(b)(2) is 22%, except that for purposes of paragraph (b) of this section the applicable consideration expensed by the service for the relevant rights shall consist only of applicable consideration expensed by the service, if any, that is incremental to the applicable consideration expensed for the rights to make the relevant permanent digital downloads and ringtones.

(b) *Computation of subminima.* For purposes of paragraph (a) of this section, the subminimum for an accounting period is the aggregate of the following with respect to all sound recordings of musical works used in the relevant subpart C offering, as defined in § 385.21, of the service provider during the accounting period—

(1) Except as provided in paragraph (b)(3) of this section, in cases in which the record company is the licensee under 17 U.S.C. 115 and the record company has granted the rights to engage in licensed subpart C activity, as defined in § 385.21, with respect to a sound recording through the third-party service together with the right to reproduce and distribute the musical work embodied therein, the appropriate all-in percentage from paragraph (a) of this section of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(2) In cases in which the record company is not the licensee under 17 U.S.C. 115 and the record company has granted the rights to engage in licensed subpart C activity, as defined in § 385.21, with respect to a sound recording through the third-party service without the right to reproduce and distribute the musical work embodied therein, the appropriate sound recording-only percentage from paragraph (a) of this section of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(3) In the case of a music bundle containing a physical phonorecord, where the music bundle is distributed by a record company for resale and the record company is the compulsory licensee, the appropriate all-in percentage from paragraph (a) of this section of the record company's total wholesale revenue from the music bundle in accordance with GAAP for the accounting period, which amount shall equal the applicable consideration for such music bundle at the time such applicable consideration is properly recognized as revenue under GAAP, subject to the provisions of § 201.19 of

this title concerning the times at which distribution and revenue recognition are deemed to occur.

(4) If a record company providing sound recording rights to the service provider for a licensed subpart C activity, as defined in § 385.21—

(i) Recognizes revenue (in accordance with GAAP, and including for the avoidance of doubt all applicable consideration with respect to such rights for the accounting period, regardless of the form or timing of payment) from a person or entity other than the service provider providing the licensed subpart C activity, as defined in § 385.21, and its affiliates, and

(ii) Such revenue is received, in the context of the transactions involved, as applicable consideration for such rights,

(iii) Then such revenue shall be added to the amounts expensed by the service provider solely for purposes of paragraph (b)(1) or (2) of this section, as applicable, if not already included in such expensed amounts. Where the service provider is the licensee, if the service provider provides the record company all information necessary for the record company to determine whether additional royalties are payable by the service provider hereunder as a result of revenue recognized from a person or entity other than the service provider as described in the immediately preceding sentence, then the record company shall provide such further information as necessary for the service provider to calculate the additional royalties and indemnify the service provider for such additional royalties. The sole obligation of the record company shall be to pay the licensee such additional royalties if actually payable as royalties hereunder; provided, however, that this shall not affect any otherwise existing right or remedy of the copyright owner nor diminish the licensee's obligations to the copyright owner.

(c) *Computation of subscriber-based royalty rates.* For purposes of paragraphs (a)(3) and (4) of this section, to determine the subscriber-based minimum applicable to any particular subpart C offering, as defined in § 385.21, the total number of subscriber-months for the accounting period shall be calculated, taking into account all end users who were subscribers for complete calendar months, prorating in the case of end users who were subscribers for only part of a calendar month, and deducting on a prorated basis for end users covered by a free trial period subject to the free trial royalty rate as described in § 385.24. The product of the total number of subscriber-months for the accounting period and the specified number of cents per subscriber shall be used as the subscriber-based component of the minimum for the accounting period.

§ 385.24 Free trial periods.

(a) *General provisions.* This section establishes a royalty rate of zero in the case of certain free trial periods for mixed service bundles, paid locker services and limited offerings under a license pursuant to 17 U.S.C. 115. Subject to the requirements of 17 U.S.C. 115 and the additional provisions of paragraphs (b) through (e) of this section, the free trial royalty rate shall apply to a musical work when a record company transmits or authorizes the transmission, as part of a mixed service bundle, paid locker service or limited offering, of a sound recording that embodies such musical work, only if—

(1) The primary purpose of the record company in providing or authorizing the free trial period is to promote the applicable subpart C offering, as defined in § 385.21;

(2) No applicable consideration for making or authorizing the transmissions is received by the record company, or any other person or entity acting on behalf of or in lieu of the record company, except for in-kind promotional consideration used to promote the sale or paid use of sound recordings or audiovisual works embodying musical works or the paid use of music services through which sound recordings or audiovisual works embodying musical works are available;

(3) The free trial period does not exceed 30 consecutive days per subscriber per two-year period;

(4) In connection with authorizing the transmissions, the record company has obtained from the service provider it authorizes a written representation that—

(i) The service provider agrees to maintain for a period of no less than 5 years from the end of each relevant accounting period complete and accurate records of the relevant authorization, and identifying each sound recording of a musical work made available through the free trial period, the licensed subpart C activity, as defined in § 385.21, involved, and the number of plays or downloads, as applicable, of such recording;

(ii) The service is in all material respects operating with appropriate license authority with respect to the musical works it is using; and

(iii) The representation is signed by a person authorized to make the representation on behalf of the service provider;

(5) Upon receipt by the record company of written notice from the copyright owner of a musical work or agent of the copyright owner stating in good faith that a particular service is in a material manner operating without appropriate license authority from such copyright owner, the record company shall within 5 business days withdraw by written notice its authorization of such uses of such copyright owner's musical works under the free trial royalty rate by that service;

(6) The free trial period is offered free of any charge to the end user; and

(7) End users are periodically offered an opportunity to subscribe to the service during such free trial period.

(b) *Recordkeeping by record companies.* To rely upon the free trial royalty rate for a free trial period, a record company making or authorizing the free trial period shall keep complete and accurate contemporaneous written records of the contractual terms that bear upon the free trial period; and further provided that, if the record company itself is conducting the free trial period, it shall also maintain any additional records described in paragraph (a)(4)(i) of this section. The records required by this paragraph (b) shall be maintained for no less time than the record company maintains records of usage of royalty-bearing uses involving the same type of licensed subpart C activity, as defined in § 385.21, in the ordinary course of business, but in no event for less than 5 years from the conclusion of the licensed subpart C activity, as defined in § 385.21, to which they pertain. If the copyright owner of a musical work or its agent requests a copy of the information to be maintained under this paragraph (b) with respect to a specific free trial period, the record company shall provide complete and accurate documentation within 10 business days, except for any information required under paragraph (a)(4)(i) of this section, which shall be provided within 20 business days, and provided that if the copyright owner or agent requests information concerning a large volume of free trial periods or sound recordings, the record company shall have a reasonable time, in view of the amount of information requested, to respond to any request of such copyright owner or agent. If the record company does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the free trial royalty rate and the record company (but not any third-party

service it has authorized) shall be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.

(c) *Recordkeeping by services.* If the copyright owner of a musical work or its agent requests a copy of the information to be maintained under paragraph (a)(4)(i) of this section by a service authorized by a record company with respect to a specific promotion, the service provider shall provide complete and accurate documentation within 20 business days, provided that if the copyright owner or agent requests information concerning a large volume of free trial periods or sound recordings, the service provider shall have a reasonable time, in view of the amount of information requested, to respond to any request of such copyright owner or agent. If the service provider does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the free trial royalty rate and the service provider (but not the record company) will be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.

(d) *Interpretation.* The free trial royalty rate is exclusively for audio-only licensed subpart C activity, as defined in § 385.21, involving musical works subject to licensing under 17 U.S.C. 115. The free trial royalty rate does not apply to any other use under 17 U.S.C. 115; nor does it apply to public performances, audiovisual works, lyrics or other uses outside the scope of 17 U.S.C. 115. Without limitation, uses subject to licensing under 17 U.S.C. 115 that do not qualify for the free trial royalty rate (including without limitation licensed subpart C activity, as defined in § 385.21, beyond the time limitations applicable to the free trial royalty rate) require payment of applicable royalties. This section is based on an understanding of industry practices and market conditions at the time of its development, among other things. The terms of this section shall be subject to de novo review and consideration (or elimination altogether) in future proceedings before the Copyright Royalty Judges. Nothing in this section shall be interpreted or construed in such a manner as to nullify or diminish any limitation, requirement or obligation of 17 U.S.C. 115 or other protection for musical works afforded by the Copyright Act, 17 U.S.C. 101, *et seq.*

§ 385.25 Reproduction and distribution rights covered.

A compulsory license under 17 U.S.C. 115 extends to all reproduction and distribution rights that may be necessary for the provision of the licensed subpart C activity, as defined in § 385.21, solely for the purpose of providing such licensed subpart C activity, as defined in § 385.21 (and no other purpose).

§ 385.26 Effect of rates.

In any future proceedings under 17 U.S.C. 115(c)(3)(C) and (D), the royalty rates payable for a compulsory license shall be established de novo.

Dated: August 21, 2013.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 2013–25454 Filed 11–12–13; 8:45 am]

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POSTAL REGULATORY COMMISSION

39 CFR Part 3010

[Docket No. RM2013–2; Order No. 1786]

Price Cap Rules for Certain Postal Rate Adjustments; Corrections

AGENCY: Postal Regulatory Commission.

ACTION: Correcting amendments.

SUMMARY: The Postal Regulatory Commission published a document in the **Federal Register** on August 26, 2013 (78 FR 52694), revising Commission rules. Due to a clerical error, the document submitted to the **Federal Register** was inconsistent with the rules adopted in Commission Order No. 1786. This document corrects the final regulations published in the **Federal Register** to be consistent with the rules adopted in Order No. 1786.

DATES: *Effective:* November 13, 2013, and is applicable beginning September 25, 2013.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION: In a notice posted November 6, 2013, on PRC's Web site, the Commission identified discrepancies between the text of several sections of rules adopted in Order No. 1786, issued on July 23, 2013, and the text of those sections of the rules as published in the **Federal Register**. This document transmits the corrections to the **Federal Register**, and has been drafted in conformance with Office of the Federal Register (OFR) requirements for substantive corrections to rules that have already taken effect. The corrections are applicable as of September 25, 2013, which coincides with the date the underlying final rules took effect.

Section 3010.11. One correction changes the word ''limitations'' to the singular form in three places in § 3010.11 (paragraphs (b)(2), (d), and (k)) and aligns the presentation of section symbols in paragraphs (d) and (k) with OFR codification practice.

Section 3010.23(d). The **Federal Register** version omits a qualifying phrase at the outset of the third sentence in § 3010.23(d). It also refers to historic volume data. The correction revises the rule to include the qualifying phrase ''Whenever possible,'' at the outset of the sentence and replaces historic with historical. These corrections are consistent with Order No. 1786 as issued.

Section 3010.28. The **Federal Register** version omits a reference to Type 1–B in the heading of § 3010.28 in both the table of contents for subpart C and in the presentation of this section in the main body of the regulations. The instruction corrects these omissions by revising the section heading where it appears in the main body. The OFR automatically generates a corresponding change in the table of contents based on this instruction.

Section 3010.42(f). Section 3010.42(f) is revised to reflect the inadvertent omission of the introductory text of a third paragraph in Order No. 1786 as issued and the impact this had on the presentation of the second sentence. The omission resulted in the second sentence in the rule as published including text associated with the omitted third sentence. To remedy this, the correcting instruction replaces the colon in the second sentence of § 3010.42(f) as it appeared in the **Federal Register** version with a period, consistent with the presentation of this sentence as adopted in Order No. 1786. This change in punctuation results in the deletion of all the text following the colon in the **Federal Register** version, so the instruction adds the third sentence as presented in Order No. 1786 as adopted, which includes introductory text and the subparagraphs that were erroneously associated with the second sentence in the **Federal Register** version. The text of those subparagraphs remains unchanged, but the designations for § 3010.42(f)(5)(A) and (B) in Order No. 1786 as adopted should have been to § 3010.42(f)(5)(i) and (ii),

respectively, to conform to mandatory OFR codification requirements.

Following publication in the **Federal Register**, these corrections will be reflected in the daily electronic Code of Federal Regulations.

List of Subjects in 39 CFR Part 3010

Administrative practice and procedure; Postal Service.

Accordingly, 39 CFR part 3010 is corrected by making the following correcting amendments:

PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

■ 1. The authority citation for part 3010 continues to read as follows:

Authority: 39 U.S.C. 503; 3622.

■ 2. In § 3010.11, revise paragraphs (b)(2), (d), and (k) to read as follows:

§ 3010.11 Proceedings for Type 1–A and Type 1–B rate adjustment filings.

* * * * *

(b) * * *

(2) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the limitation established in § 3010.28.

* * * * *

(d) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under §§ 3010.21 or 3010.22, as applicable, the limitation set forth in § 3010.28, and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

* * * * *

(k) A Commission finding that a planned Type 1–A or Type 1–B rate adjustment is in compliance with the annual limitation calculated under §§ 3010.21 or 3010.22, as applicable; the limitation set forth in § 3010.28; and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned Type 1–A or Type 1–B rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter I is provisional and subject to subsequent review.

■ 3. In § 3010.23, revise the third sentence of paragraph (d) to read as follows:

§ 3010.23 Calculation of percentage change in rates.

* * * * *

(d) * * * Whenever possible, adjustments shall be based on known mail characteristics or historical volume data, as opposed to forecasts of mailer behavior. * * *

■ 4. In § 3010.28, revise the section heading to read as follows:

§ 3010.28 Maximum size of Type 1–B rate adjustments.

* * * * *

■ 5. In § 3010.42, revise paragraph (f) to read as follows:

§ 3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.

* * * * *

(f) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall be based on accepted analytical principles. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:

(1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;

(2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement;

(3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement;

(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs; and

(5) If the Postal Service believes the Commission's accepted analytical principles are not the most accurate and reliable methodology available:

(i) An explanation of the basis for that belief; and

(ii) A projection of the change in net financial position resulting from the agreement made using the Postal Service's alternative methodology.

* * * * *

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–27159 Filed 11–8–13; 11:15 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0228; FRL–9902–58–Region 4]

Approval and Promulgation of Implementation Plans; Mississippi; Transportation Conformity SIP—Memorandum of Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Mississippi Department of Environment Quality (MDEQ) on May 31, 2013. This submission adopts a memorandum of agreement (MOA) establishing transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. This action streamlines the conformity process to allow direct consultation among agencies at the Federal, state and local levels. This final action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective January 13, 2014 without further notice, unless EPA receives adverse comment by December 13, 2013. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2013–0228 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2013–0228,'' Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of

operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m.to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2013–0228'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m.to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's telephone number is 404–562–9222. She can also be reached via electronic mail at *sheckler.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA taking?

EPA is taking direct final action to approve MDEQ's May 31, 2013 SIP submission, to adopt a MOA establishing transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures for a portion of Desoto County, Mississippi and Mississippi's SIP pursuant to the sections 110 and 176 of the CAA. Pursuant to section 110 of the CAA, EPA is approving into the Mississippi SIP the May 31, 2013, transportation conformity MOA.

II. Background for This Action

A. What is transportation conformity?

Transportation conformity is required under section 176(c) of the CAA to ensure that federally supported highway, transit projects, and other activities are consistent with (''conform to'') the purpose of the SIP. Conformity [1] currently applies to areas that are designated nonattainment and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for transportation related criteria pollutants including ozone, particulate matter (e.g., $PM_{2.5}$ and PM_{10}), carbon monoxide, and nitrogen dioxide.

The 1990 Amendments to the CAA expanded the scope and content of the conformity concept by defining the scope of conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. Also, the CAA provides that no Federal activity will: (1) Cause or contribute to any new violation of any NAAQS in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The requirements of section 176(c) of the CAA apply to all departments, agencies and instrumentalities of the Federal government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. Chapter 53). EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP pursuant to section 176(c) of the CAA. The CAA also required the procedure to include a requirement that each state submit a revision to its SIP to include conformity criteria and procedures.

B. Why are states required to submit a transportation conformity SIP?

A transportation conformity SIP is a plan which contains criteria and procedures for the State Department of Transportation (DOT), metropolitan planning organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and project pursuant to section176(c) of the CAA. EPA promulgated the first federal transportation conformity criteria and procedures (''Conformity Rule'') on November 24, 1993 (58 FR 62188) which was codified at 40 CFR part 51, subpart T and 40 CFR part 93. Among other things, the rule required states to address all provisions of the conformity rule in their SIPs frequently referred to as ''conformity SIPs.'' Under 40 CFR 51.390, most sections of the conformity rule were required to be copied verbatim into the SIP. On August 10, 2005, the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (SAFETEA–LU) was signed into law. SAFETEA–LU revised

[1] Conformity first appeared as a requirement in the CAA in the 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

section 176(c) of the CAA transportation conformity provisions by streamlining the requirements for conformity SIPs. Under SAFETEA–LU, states are required to address and tailor only three sections of the rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c). In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule. These changes took effect on August 10, 2005, when SAFETEA–LU was signed into law. The rule has been subsequently revised on August 7, 1995 (60 FR 40098), August 15, 1997 (62 FR 43780), November 14, 1995 (60 FR 57179), April 10, 2000 (65 FR 18911), and August 6, 2002 (67 FR 50808).

States may also choose to develop a MOA which establishes the roles and procedures for transportation conformity in place of adopting regulations. The MOA includes the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including the U.S. Department of Transportation (USDOT) Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and EPA.

C. How does transportation conformity work?

The Federal or state transportation conformity rule applies to applicable NAAQS nonattainment and maintenance areas in the state. The MPO, the DOT (in absence of a MPO), State and local air quality agencies, EPA and the USDOT are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions budget (MVEB) established in the SIP. The calculated emissions must be equal to or smaller than the federally approved MVEB in order for the USDOT to make a positive conformity determination with respect to the SIP.

Pursuant to Federal regulations, when an area is designated nonattainment for a transportation related NAAQS, the state is required to submit a transportation conformity SIP one year after the effective date of the nonattainment area (NAA) designations. *See* 40 CFR 51.390(c). On April 30, 2012, EPA designated the Memphis, TN-MS-AR area (hereafter referred to as the Memphis Area) as nonattainment for the 2008 8-hour ozone NAAQS. *See* 77 FR 30088. The area is comprised of Crittenden County, Arkansas, and Shelby County, Tennessee in their entireties and a portion of Desoto County, Mississippi. These designations became effective on July 20, 2012; therefore, pursuant to 40 CR 51.390(c), MDEQ was required to submit a transportation conformity SIP by July 20, 2013, to address the interagency consultation procedures and enforceable commitments related to conformity of transportation plans, programs, and projects in the 8-hour ozone Memphis NAA.[2] The Memphis Urban Area MPO [3] is within the Memphis Area and is considered the multi-jurisdictional agency responsible for the implementation and coordination of urban transportation planning for all of Shelby County Tennessee, the western four miles of Fayette County, Tennessee and the northern twelve miles of DeSoto County, Mississippi.[4]

III. EPA Analysis of Mississippi's Submittal

EPA's Transportation Conformity rule requires the states to develop their own processes and procedures for interagency consultation among the federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and the USDOT in consulting with the state and local air quality agencies and EPA before making conformity determinations. The conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and the US DOT.

On May 31, 2013, the State of Mississippi submitted to EPA the DeSoto County (portion of the Memphis NAA) conformity and consultation interagency SIP, based on an MOA signed by the Memphis Urban Area MPO, the Mississippi Transportation Commission, Mississippi Department of Transportation, MDEQ, the USDOT FHWA—Mississippi Division, the USDOT FTA and EPA Region 4. Mississippi's MOA establishes procedures for interagency consultation for incorporation into the SIP to comply with section 176(c) of the CAA and 40 CFR 93 regarding conformity of transportation plans, programs, and projects that are developed funded or approved by the USDOT, Memphis Urban Area MPO, MTC and acted by and through MDEQ.

The State of Mississippi developed its consultation SIP based on the elements contained in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c). As a first step, MDEQ worked with the existing transportation planning organization's interagency committees that included representatives from the MDEQ; MDOT; the Memphis Urban Area MPO; FHWA—Mississippi Division; FTA; and EPA Region 4. The interagency committee met regularly and drafted the consultation procedures considering elements in 40 CFR Part 93.105, 93.122(a)(4)(ii), and 93.125(c), and integrated the local procedures and processes into the MOA. Mississippi's MOA requirement for interagency consultation is currently only applicable to the DeSoto County portion of the 2008 8-hour Memphis TN-AR-MS NAA. The resulting consultation process developed is unique to the State of Mississippi.

A public notice announcement on March 8, 2013, indicated that the MOA was available for public comment until April 9, 2013. The MDEQ posted the MOA on their Web site and provided access to the documents for review in person at the MDEQ Jackson office. A public hearing to receive comments regarding the proposed conformity SIP was held on April 9, 2013, in Hernando, Mississippi. No comments were received at the public hearing.

EPA has reviewed MDEQ's May 31, 2013, SIP submittal to assure consistency with the CAA as amended by SAFETEA–LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and has preliminarily determined that Mississippi's MOA is in accordance with the above referenced federal requirements.

IV. Final Action

For the reasons set forth above, EPA is taking direct final action, pursuant to section 110 and 176 of the Act, to

[2] Tennessee and Arkansas will submit and/or update their respective transportation conformity SIPs for the Memphis NAA in separate submissions.

[3] The West Memphis MPO is the agency responsible for urban transportation planning for the Crittenden County, Arkansas portion of the Memphis, TN-MS-AR 2008 8-hour ozone NAA.

[4] The portion of the Memphis Urban MPO in DeSoto County, Mississippi is the same boundary EPA designated as NAA for the Memphis, TN-MS-AR, 2008 8-hour ozone NAA on April 30, 2012. *See* 77 FR 30088. The boundary extends from the Mississippi -Tennessee state line twelve miles into DeSoto County including the jurisdictions of Horn Lake, Southaven, Olive Branch, Hernando and Walls in Desoto County.

approve Mississippi's May 31, 2013, transportation conformity SIP and MOA to implement the interagency consultation procedures and enforceable commitments in a portion of Desoto County, Mississippi.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 13, 2014 without further notice unless the Agency receives adverse comments by December 13, 2013.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 13, 2014 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particular matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 24, 2013.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart (Z)—(Mississippi)

■ 2. Section 52.1270 paragraph (e) is amended by adding a new entry for ''Transportation Conformity Interagency Consultation and General Provisions'' at the end of the Table to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
*	* * *	*	*	*
Transportation Conformity Interagency Consultation And General Provisions.	DeSoto County portion of Memphis, TN–AR–MS 2008 8-hour Ozone Nonattainment Area	May 31, 2013	11–13–13 [Insert citation of publication].	

* * * * *

[FR Doc. 2013–27019 Filed 11–12–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375; FCC 13–113]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rule changes to bring high interstate inmate calling service (ICS) rates into compliance with the statutory mandate of being just, reasonable, and fair. This action is intended to bring rate relief to inmates and their friends and families who have historically been required to pay above-cost rates for interstate ICS.

DATES: This final rule is effective February 11, 2014 except for 47 CFR 64.6060 and Section III.I which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Lynne Engledow, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520 or *lynne.engledow@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 12–375, FCC 13–113, adopted on August 9, 2013 and released on September 26, 2013. The full text of this document is available for public inspection during regular business hours in the Commission's Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The full text of this document may be downloaded at the following Internet address: *http://www.fcc.gov/documents/—.* The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request alternative formats for persons with disabilities (e.g., accessible format documents, sign language, interpreters, CARTS, etc.), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY). The Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

I. Introduction

1. Nearly 10 years ago Martha Wright, a grandmother from Washington, DC, petitioned the Commission for relief from exorbitant long-distance calling rates from correctional facilities. Tens of thousands of others have since urged the Commission to act, explaining that the rates inmates and their friends and families pay for phone calls render it all but impossible for inmates to maintain contact with their loved ones and their broader support networks, to society's detriment. Today, we answer those pleas by taking critical, and long overdue, steps to provide relief to the millions of Americans who have borne the financial burden of unjust and unreasonable interstate inmate phone rates.

2. This Order will promote the general welfare of our nation by making it easier for inmates to stay connected to their families and friends while taking full account of the security needs of correctional facilities. Studies have shown that family contact during incarceration is associated with lower recidivism rates. Lower recidivism means fewer crimes, decreases the need for additional correctional facilities, and reduces the overall costs to society. More directly, this helps families and the estimated 2.7 million children of incarcerated parents in our nation, an especially vulnerable part of our society. One commenter states that the ''[l]ack of regular contact with incarcerated parents has been linked to truancy, homelessness, depression, aggression, and poor classroom performance in children.'' In this Order we help these most vulnerable children by facilitating contact with their parents. By reducing interstate inmate phone rates, we will help to eliminate an unreasonable burden on some of the most economically disadvantaged people in our nation. We also recognize that inmate calling services (ICS) systems include important security features, such as call recording and monitoring, that advance the safety and security of the general public, inmates, their loved ones, and correctional facility employees. Our Order ensures that security features that are part of modern ICS continue to be provided and improved.

3. Our actions address the most egregious interstate long distances rates and practices. While we generally prefer to promote competition to ensure that inmate phone rates are reasonable, it is clear that this market, as currently structured, is failing to protect the inmates and families who pay these charges. Evidence in our record demonstrates that inmate phone rates today vary widely, and in far too many cases greatly exceed the reasonable costs of providing the service. While an inmate in New Mexico may be able to place a 15 minute interstate collect call at an effective rate as low as $0.043 per minute with no call set up charges, the same call in Georgia can be as high as $0.89 per minute, with an additional per-call charge as high as $3.95—as much as a 23-fold difference. Also, deaf prisoners and family members in some instances pay much higher rates than hearing prisoners for equivalent communications with their families. For example, the family of a deaf inmate in Maryland paid $20.40 for a *nine minute*

call placed via Telecommunications Relay Service (TRS)—an average rate of $2.26 per minute. A significant factor driving these excessive rates is the widespread use of site commission payments—fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service. These site commission payments, which are often taken directly from provider revenues, have caused inmates and their friends and families to subsidize everything from inmate welfare to salaries and benefits, states' general revenue funds, and personnel training.

4. We applaud states such as New Mexico and New York that have already accomplished reforms, and thereby shown that rates can be reduced to reasonable, affordable levels without jeopardizing the security needs of correctional facilities and law enforcement or the quality of service. Similarly, we acknowledge that some federal agencies, such as the Department of Homeland Security's Immigration Customs and Enforcement (ICE), have taken similar measures to provide lower rates, resulting in nationwide calling rates of $0.12 a minute without additional fees or commissions at ICE facilities. Following such reforms, there is significant evidence that call volumes increased, which shows the direct correlation of how these reforms promote the ability of inmates to stay connected with friends and family. There is also support in the record that ICS rate reform has not compromised the security requirements of correctional facilities. Thus, these examples disprove critics who fear that reduced rates will undermine security or cannot be implemented given provider costs. Our actions build upon these examples by reducing rates, while balancing the unique security needs of facilities and ensuring that inmate phone providers receive fair compensation and a reasonable return on investment.

5. While some states have taken action to reduce ICS rates, the majority have not. We therefore take several actions to address interstate rates. We require inmate phone providers to charge cost-based rates to inmates and their families, and establish ''safe-harbor'' rates at or below which rates will be treated as lawful (*i.e.,* just, reasonable, and fair) unless and until the Commission issues a finding to the contrary. Specifically, we adopt interim safe harbor rates of $0.12 per minute for debit and prepaid interstate calls and $0.14 per minute for collect interstate calls. Based on the evidence in this record, we also set an interim hard cap on ICS providers' rates of $0.21 per minute for interstate debit and prepaid calls, and $0.25 per minute for collect interstate calls. This upper ceiling ensures that the highest rates are reduced immediately to the upper limit of what can reasonably be expected to be cost-based rates. Interstate ICS rates at or below the safe harbor are presumed just, reasonable, fair and cost-based. Rates between the interim safe harbor and the interim rate cap will not benefit from this presumption.

6. We base the safe harbor rate levels and rate caps on data and cost studies presented by parties and/or taken directly from ICS provider service contracts in the record. The safe harbor rate levels are derived from ICS rates in seven states that have prohibited site commission payments from ICS providers to facilities. The interim rate caps adopted are based on (1) the highest total-company costs presented in a cost study provided by Pay Tel, an ICS provider that exclusively serves jails, and (2) the highest collect calling cost data presented in the 2008 ICS Provider Data Submission, compiling data from seven different ICS providers that serve various types and sizes of correctional facilities. We based the interim rate caps on these high levels, without attempting to exclude any unrecoverable costs or adjust any inputs, in order to ensure that the cap levels were a conservative estimate of the levels under which all ICS providers could provide service. Even so, we provide a waiver process to account for any unique circumstances.

7. In addition to immediate rate reform, we find that site commission payments and other provider expenditures that are not reasonably related to the provision of ICS are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families. We require that charges for services ancillary to the provision of ICS must be cost-based. We prohibit special charges levied on calls made using teletypewriter (TTY) equipment or other technologies used to access TRS. While we find that the record fully supports the safe harbor and rate caps adopted here, we seek additional information that could allow us to refine these rates in the future. Accordingly, we require all ICS providers to submit data on their underlying costs so that the Commission can develop a permanent rate structure, which could include more targeted tiered rates in the future.

8. The Communications Act (Act) requires that interstate rates be just and reasonable for *all* Americans—there is no exception in the statute for those who are incarcerated or their families. The Act further requires that our payphone regulations ''benefit . . . the *general* public,'' not just some segment of it. Our actions in this Order, while long overdue, fulfill these statutory mandates while taking into account the legitimate and unique requirements for security and public safety in the provision of inmate phone services and the benefits to society of increased communications between inmates and their families. Our work, however, is not done, and we continue in the Further Notice (or FNPRM) our efforts to ensure that these rates are just, reasonable, and fair to the benefit of both providers and the general public.

II. Procedural Background

9. In 2003, Mrs. Wright and her fellow petitioners (Petitioners), which included current and former inmates at Corrections Corporations of America-run confinement facilities, filed a petition with the Commission seeking to initiate a rulemaking to address high ICS rates. The petition sought to prohibit exclusive ICS contracts and collect-call-only restrictions. In 2007, the same petitioners filed a second rulemaking petition, seeking to address ICS rates by requiring a debit-calling option in correctional facilities, prohibiting per-call charges, and establishing rate caps for interstate, interexchange ICS. The Commission sought and received comment on both petitions. In 2008, certain ICS providers placed in the record a cost study that quantified their interstate ICS costs.

10. In December 2012, the Commission adopted a notice of proposed rulemaking seeking comment on, among other things, the proposals in the Wright petitions. The *2012 ICS NPRM,* 78 FR 4369, Jan. 23, 2013, sought comment on the two petitions and proposed ways to ''balance the goal of ensuring reasonable ICS rates for end users with the security concerns and expense inherent to ICS within the statutory guidelines of sections 201(b) and 276 of the Act.'' The *2012 ICS NPRM,* 78 FR 4369, Jan. 23, 2013, sought comment on other issues affecting the ICS market, including possible rate caps for interstate ICS; the ICS Provider Data Submission; collect, debit, and prepaid ICS calling options; site commissions; issues regarding disabilities access; and the Commission's statutory authority to regulate ICS.

11. The FCC's Consumer Advisory Committee (CAC) adopted a recommendation in 2012 finding that ICS rates may be ''unreasonably high and unaffordable'' and that such high ICS rates challenge the ''national goal of

the reduction of recidivism among inmates.'' The CAC recommended that the Commission: ensure that the rates for ICS calls are reasonable; restrict ''commissions'' paid to correctional institutions; encourage the use of ''prepaid debit accounts'' or use of other ''low-cost minutes;'' and continue to allow collect calls ''with charges that are a reasonable amount above the actual cost of providing the call.'' On August 2, 2013, the CAC reiterated its request for the Commission to take action on ''this long overdue issue'' of high ICS rates.

III. Ensuring That Rates for Interstate Inmate Calling Services Are Just, Reasonable, and Fair

12. In this Order, we take several actions to ensure that interstate ICS rates are just, reasonable, and fair as required by the Communications Act. First, we examine the statute and the current state of the ICS market and conclude that the current market structure is not operating to ensure that rates are consistent with the statutory requirements of sections 201(b) and 276 to be just, reasonable, and fair. Thus, we require that interstate ICS rates be cost-based. We address what appropriate costs are and conclude, among other things, that site commission payments, in and of themselves, are not a cost of providing the communications service—ICS. We then address several interrelated rate issues, including rate levels and options for provider compliance with our rules including ''safe harbor'' rate levels. We require that ancillary service charges also be cost-based. We address rates for the use of TTY equipment. We conclude that our actions herein do not require us to abrogate existing contracts between correctional facilities and ICS providers; to the extent that any agreement may need to be revisited, it is only because those agreements cannot supersede our authority over rates charged to end users. Finally, we address collect-calling only requirements at correctional facilities, require an annual certification filing, and initiate a mandatory data collection, directing all ICS providers to file data regarding their ICS costs. These actions take into account the needs of ICS providers for adequate cost recovery and the need for just, reasonable, and fair rates for ICS consumers while meeting the unique security needs inherent in the provision of ICS.

A. Statutory Requirements for ICS

1. Statutory Standards for ICS Rates and Practices

13. The Communications Act requires ICS rates, charges, and practices to be just, reasonable, and fair. Section 201(b) provides that ''charges, practices, classifications, and regulations for and in connection with [interstate common carrier] service, shall be just and reasonable,'' and grants the Commission authority to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.'' The Commission has previously found that interstate ICS, typically a common carrier service, falls within the mandates of section 201.

14. In addition, section 276 directs the Commission to ''establish a per call compensation plan to ensure that all payphone service providers''—which the statute defines to include providers of ICS—''are fairly compensated for each and every completed intrastate and interstate call.'' The Commission has previously found the term ''fairly compensated'' permits a range of compensation rates that could be considered fair, but that the interests of both the payphone service providers and the parties paying the compensation must be taken into account. Section 276 makes no mention of the technology used to provide payphone service and makes no reference to ''common carrier'' or ''telecommunications service'' definitions. Thus, the use of VoIP or any other technology for any or all of an ICS provider's service does not affect our authority under section 276. Indeed, several commenters state that the Commission can regulate ICS regardless of the underlying technology used to provide the service. Finally, section 276 provides that ''[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.''

15. Our exercise of authority under sections 201 and 276 is further informed by the principles of Title I of the Act. Among other things, that provision states that it is the Commission's purpose ''to make available, so far as possible, to *all* the people of the United States'' communications services ''at reasonable charges.'' The regulation of interstate ICS adopted in this Order advances those objectives.

2. Types of Facilities

16. The rules we adopt herein apply to interstate ICS provided in ''correctional institutions'' as that term is used in section 276. Accordingly, the scope of facilities covered by this Order is coextensive with the scope of the term ''correctional institutions'' in the statute and includes, for example, prisons, jails and immigration detention facilities.

17. *Prisons and Jails.* Prisons and jails are both core examples of facilities that constitute ''correctional institutions'' under section 276 and this Order. The Commission has long made clear that its ICS rules apply at a minimum to inmate telephone service in prisons and jails. For instance, the 2002 *Inmate Calling Services Order on Remand and NPRM* repeatedly referred to ''prisons'' and ''jails,'' often in contexts that explicitly make clear that both entities fall within the definition of ''correctional institution.'' 67 FR 17009, April 9, 2002. Similarly, in the *2012 ICS NPRM,* the Commission repeatedly used the more generic term ''prison,'' noting, however, that jails are a particular subset of prisons (*i.e.,* that jails are ''local prisons'' to be distinguished from ''state prisons''). 78 FR 4369, Jan. 23, 2013. Finally, a number of commenters in this proceeding—including ICS providers—submitted data for both prisons and jails, and/or otherwise stated or assumed within their written advocacy that both entities would be subject to any new rules. We do not distinguish in this Order between prisons and jails, in part because our record does not permit us to draw any clear distinctions. Because both are included within the scope of this Order, however, there is no need at this time to draw any distinction.

18. *Immigration Detention Facilities.* Immigration detention facilities also are a type of ''correctional institutions.'' The term is widely understood to include ''facility[ies] of confinement.'' This common understanding of the term has long been reflected in advocacy regarding the lawfulness of ICS rates under section 276. As early as 2004, for example, commenters made arguments predicated on the assumption that immigration detention facilities are a type of ''correctional institution'' under section 276. Petitioners in this proceeding likewise made arguments based on the same assumption, as did a number of commenters in response to the *2012 ICS NPRM* as well as participants in the Reforming ICS Rates Workshop. This common understanding of that statutory term was not disputed or called into question by any evidence in the record. As such, ''correctional institution'' as used within section 276 includes immigration detention facilities.

19. Additional support for this finding derives from the largely fungible nature of jails and facilities where immigrants are detained when viewed from the standpoint of detained immigrants. As commenters have pointed out, of the nearly 400,000 immigrants detained in this country each year, many are ''held in local jails and prisons that have contracted with Immigration Customs and Enforcement.'' This fact suggests a rough functional equivalence between jails and prisons on the one hand, and immigration detention facilities on the other—particularly from the perspective of the would-be users of ICS (*i.e.,* apprehended immigrants who may be detained either in a jail or some other facility, depending on happenstance). Moreover, treating the two categories of institutions differently would result in disparate treatment among immigrant detainees. For instance, if immigration detention facilities were excluded from the scope of ''correctional institution,'' immigrant detainees in jails would receive a ''fair'' rate for phone calls while immigrant detainees in ICE facilities would not. This kind of disparate treatment would not be just or consistent with the public interest, and for this reason as well we find it reasonable that ''correctional institutions'' includes immigration detention facilities.

B. Need for Reform

20. In this section, we first describe the different categories of rates and charges for ICS and the different options that end users have to pay for them. We then explore the record on the costs of providing ICS, and the record on rates, and find that in most facilities the rates for interstate ICS far exceed the cost of providing ICS. To assess why this occurs, we look at competition in the market for ICS, which, in this case, does not adequately exert downward pressure on end-user rates. We examine the societal impacts of high ICS rates, and we conclude that we must take action to meet our statutory mandate that all rates be just, reasonable, and fair.

1. Current Structures for ICS Rates and Payment Options

21. ICS providers generally offer their services pursuant to contracts with correctional facilities. These contracts vary by the correctional facilities and ICS providers involved, and the states and local jurisdictions in which the services are provided. ICS rates can differ for local, intrastate long distance, and interstate long distance calls and can include per-minute or per-call charges or both. This varies, however, and some ICS contracts provide only for a per-minute charge while others provide only for a flat rate per call. It is important to note that the *users* of ICS—the inmates and the family and friends whom they call—are not party to these contracts. Rather, the correctional institution agrees to an amount that *it* is willing to allow the ICS provider to charge.

22. The inmates who use ICS (or the persons called by those inmates) typically pay for calls by using collect, debit, or prepaid payment options. These methods differ as to who pays for the call and when payment is received. Collect calls occur when an inmate places a call with the assistance of a live operator or an automated recording, and the called party is billed after the call is completed. Correctional facilities use collect calling due to the relative ease of administering such calls, as well as the high degree of security and control involved. ICS providers assert, however, that collect calling can pose billing and collection problems.

23. Debit calling involves an arrangement whereby the charges are deducted from an inmate's pre-existing account that often can be used to pay for a variety of goods and services within a correctional facility. An inmate's account can be funded by the inmate (with earned funds, for example) or by outside parties. Inmates typically place debit calls by dialing into a central number and using a personal identification number (PIN) or by entering the numbers listed on a physical debit card. An aggregated list on the record of current ICS contract rates indicates that 36 states currently allow debit calling, and that debit calling is less expensive than collect calling in many of those states. Some facilities allegedly do not favor debit calling because debit calling can be more administratively burdensome than collect calling.

24. Prepaid calling refers to arrangements whereby the called party has a prepaid account set up with the ICS provider in advance. This account is often established and replenished by the inmates' friends and family members. The record indicates that prepaid calling is generally less expensive than collect calling but can be about equal in rates to debit calling. Some ICS contracts are limited to collect calling only while others allow prepaid and/or debit calling options.

2. The Record on ICS Costs

25. In this section, we highlight aspects of the record regarding the costs of providing ICS. In 2008, seven ICS providers filed a cost study based on proprietary cost data for certain correctional facilities with varying call cost and call volume characteristics. The study apportioned interstate ICS costs into per minute and per call categories and calculated the resulting averages for both debit and collect calls. The results of the study indicated that the per-call cost for debit calls was $0.16 per minute and the per-call cost for collect calls was $0.25 per minute. The providers subsequently provided additional usage data and cost calculations but did not otherwise make the underlying proprietary cost information available.

26. In response to the *2012 ICS NPRM,* Securus filed a report analyzing per-call and per-minute costs of ICS for certain correctional facilities it serves. The report was based on 2012 data and analyzed cost, call volume, site commission and other data according to type and size of facility. It divided the study sample into four groups, including one for state department of corrections facilities and three others for different-sized jail facilities. The report contained total cost data for the facilities but did not otherwise provide disaggregated cost data. Using this data, the Commission calculated an average per-minute cost for interstate calls from all facilities included in the report to be $0.12 per minute with commissions and $0.04 per minute without them. We note that the two groups in the Securus report with the smallest facilities (''Medium 10'' and ''Low 10'') are estimated to have fewer than 50 (''Medium 10'') and fewer than 5 (''Low 10'') inmates per facility, respectively. Facilities of these sizes hold only a very small share of inmates nationally. Thus, the data for the ''Medium 10'' and ''Low 10'' groups do not necessarily reflect the costs of serving vast majority of inmates that generate nearly all calls. Nonetheless, for completeness we included those data in calculating the averages mentioned above.

27. Pay Tel also filed financial and operational data for its ICS operations, which it states are exclusively in jails, not prisons. The filing contained comprehensive cost, capitalized asset, call volume, and other actual and projected data. The non-confidential cost summary included in the filing reported actual and projected 2012–2015 average total costs for collect and debit per-minute calling of approximately $0.23 and $0.21, respectively, (including the cost of an advanced security feature known as continuous voice biometric identification).

28. Although CenturyLink did not file a cost study, it did file summary cost

information for its ICS operations. Specifically, CenturyLink reported that its per minute costs to serve state departments of corrections facilities (excluding site commission payments) averaged $0.116 and that its per-minute costs to serve county correctional facilities (excluding site commission payments) averaged $0.137.

29. The record in this proceeding suggests that the costs of providing ICS are decreasing, in part due to technology advances. As one smaller ICS provider stated, ''[g]iven modern-day technology, the costs for providing secure phone and video services to correctional facilities are low (and are getting lower).'' As ICS moves increasingly to IP technology, we expect costs to decline as is the case for similar services that are not ICS. Some commenters and the Petitioners posit that ''[t]echnology has driven the actual cost of ICS calls to a fraction of what they were when the petitions were filed.'' In particular, they point to the replacement of live operators with automated systems, the reduction or total absence of on-site service by the ICS providers, the consolidation of ICS providers, and the centralized application of requested security measures. The ability to centrally provision across multiple facilities is especially salient given that the spread of hosted and/or managed service capabilities can result in reduced total cost of ownership for solutions such as VoIP with more centralized—that is, cloud-based—remote services, provided over IP packet based networks.

30. Other developments also point to lower costs. These changes include lower ''basic telecommunications costs.'' Consistent with recent trends in capital costs for the communications industry, some providers acknowledge that capital costs for on-site equipment are decreasing. In addition, ICS providers and correctional facilities increasingly offer prepaid and debit calling as an alternative to collect calling. Because every prepaid or debit call is paid, this trend is lowering provider costs by reducing uncollectibles. Indeed, Pay Tel was a participant in the 2008 cost study, which concluded the difference between the costs of debit and collect calls was $0.09. In its 2013 submission, Pay Tel's costs indicate the differential between the costs of debit and collect calls had fallen to $0.02, with the collect calling costs decreasing significantly.

31. Further, the Commission adopted comprehensive intercarrier compensation reforms, which have reduced the costs of transport and certain long distance charges for ICS providers, a trend that will continue as these reforms continue to be implemented. Moreover, IP-transit charges, relevant for the supply of IP-based services, have also steadily fallen.

32. Notwithstanding these lower cost trends, some providers assert their costs have stayed the same or increased due to factors such as investments in enhanced features, general and administrative costs such as additional personnel to create and maintain individual customer accounts, and high corporate debt. Some ICS providers also include ''free-to-the-inmate'' services such as free calls to public defenders, free calls for indigent inmates, and free visitation calls as a portion of their costs of providing ICS. They also highlight the need to provide security features that are necessary to the provision of ICS though there is insufficient evidence to indicate that the costs of providing such security features have increased since the ICS Provider Data Submission.

33. Finally, providers point to ''site commissions'' as a significant driver of increases to rates charged to inmates. Site commissions are payments made from ICS providers to correctional facilities and related state authorities. Since the First Wright Petition was filed in 2003, the record indicates that there has been a significant increase in site commission payments made in connection with the provision of ICS. Such payments can take the form of a percentage of gross revenue, a signing bonus, a monthly fixed amount, yearly fixed amount, or in-kind contributions. Site commission payments are currently prohibited in seven states, as well as at some federal detention facilities including dedicated facilities operated by ICE.

34. The record makes clear that where site commission payments exist, they are a significant factor contributing to high rates. Site commission payments are often based on a percentage of revenues ICS providers earn through the provision of ICS, and such percentages can range from 20 to 88 percent. While the record indicates that site commission payments sometimes fund inmate health and welfare programs such as rehabilitation and educational programs; programs to assist inmates once they are released; law libraries; recreation supplies; alcohol and drug treatment programs; transportation vouchers for inmates being released from custody; or other activities, in accordance with the decisions of prison administrators and other local policymakers, such payments are also used for non-inmate needs, including employee salaries and benefits, equipment, building renewal funds, states' general revenue funds, and personnel training. Thus, it is clear that the level of such payments varies dramatically and their use and purposes differ significantly, from funding roads to purposes that ultimately benefit inmate welfare.

3. The Record on ICS Rates

35. The record contains data regarding interstate ICS rates, including an aggregation of ICS contract data and current ICS contracts by state. Some of the rates for interstate calls are very high by any measure. While most Americans have become accustomed to paying no additional charge for individual long distance calls, inmates, or those whom they call, pay as much as $17.30, $10.70 or $7.35 for a 15-minute interstate collect call, depending upon the facility where the inmates are incarcerated.

36. Some states and federal agencies, such as ICE, have reformed ICS rates and achieved significantly lower rates. Additionally, interstate ICS rates vary significantly and in ways that are unlikely to be based on ICS providers' costs. Individual ICS providers charge widely varying rates in the different facilities they serve, notwithstanding their ability to share the costs of serving multiple facilities using centralized call routing and management and security platforms. For example, ICS provider GTL has entered into contracts to charge both one of the highest rates for a 15-minute collect call ($17.30 in Arkansas, Georgia, and Minnesota) and one of the lowest ($0.72 in New York).

37. One of the most significant factors in rate levels is whether the relevant state has reformed or addressed ICS rates. For example, an interstate collect call in Missouri (a state that has reformed ICS rates) can cost as little as $0.05 per minute for a 15-minute call, while the same call in Georgia, a state that has not undertaken rate reform, can be as high as $0.89 per minute, plus an additional per-call charge as high as $3.95—as much as a 23 fold difference. States that have lowered rates have done so in different ways. Some have banned site commissions entirely, and others permit only limited or sharply-reduced site commissions. Some states have imposed rate caps, disallowed or reduced per-call charges, and required providers to offer less expensive calling options, such as prepaid or debit calling.

38. Site commission payments appear to be a particularly significant contributor to high rates. Several states have eliminated or reduced such payments, and available data indicate that ICS rates in those states are

substantially lower than those in states that require commission payments. For example, in New Mexico, after site commissions were prohibited, ICS rates fell from $10.50 for a 15-minute interstate collect call to $0.65 for the same 15-minute call based on revised ICS rates—a 94 percent reduction. Similarly, New York ended site commission payments in 2008, ''taking the position that the state prison system shall not accept or receive revenue in excess of its reasonable operating cost for establishing and administering its ICS, while ensuring that the system provides reasonable security measures to preserve the safety and security of prisoners, correctional staff, and call recipients.'' New York's prison phone rates prior to ending its commission payments were $1.28 per call plus $0.068 per minute for all categories of calls, or $2.30 for a 15-minute call. Today, New York rates are $0.048 per minute for all categories of calls with no per-call charges, or $0.72 for a 15-minute call—a 69 percent reduction. When site commission payments were eliminated in South Carolina and Michigan, the average cost of a 15-minute call went down, from $2.70 to $1.35 and from $5.30 to $1.10, respectively. There is no evidence in this record that these reformed rates are below cost or insufficient to cover necessary security features of the ICS networks, or do not provide fair compensation for ICS providers. Moreover, ICS providers have seen significant increases in call volumes in states in which rates have been lowered, often providing additional revenue even as rates decrease.

4. Competition in the ICS Market

39. The Commission traditionally prefers to rely on market forces, rather than regulation, to constrain prices and ensure that rates are just and reasonable. The *2012 ICS NPRM* sought comment on the competitive nature of the ICS market and whether such competition constrains ICS rates. 78 FR 4369, Jan. 23, 2013. Economic literature states that, in effectively competitive markets, firms expect to earn sufficient revenues to cover their long run economic costs, and not more.

40. In response to the *2012 ICS NPRM,* some commenters suggest that the ICS market is competitive but, in so doing, these commenters focus on competition among providers to obtain contracts from correctional facilities, not whether there is competition within the facility giving inmates competitive options for making calls. While the process of awarding contracts to provide ICS may include competitive bidding, such competition in many instances benefits correctional facilities, not necessarily ICS consumers—inmates and their family and friends who pay the ICS rates, who are not parties to the agreements, and whose interest in just and reasonable rates is not necessarily represented in bidding or negotiation.

41. Thus, the Commission has previously found that competition during the competitive bidding process for ICS ''does not exert downward pressure on rates for consumers,'' and that ''under most contracts the commission is the single largest component affecting the rates for inmate calling service.'' We reaffirm those findings here. Indeed, as the Commission has found, competition for ICS contracts may actually tend to increase the rate levels in ICS contract bids where site commission size is a factor in evaluating bids. For example, a former Commissioner on the New Mexico Public Regulation Commission, Jason Marks, has stated that the interstate ICS market is characterized by ''reverse competition'' because of its ''setting and security requirements.'' He further asserts that ''reverse competitive markets are ones where the financial interests of the entity making the buying decision can be aligned with the seller, and not the buyer'' and that such competition ''is at its most pernicious in the inmate phone service context because buyers not only do not have a choice of service providers, they also have strong reasons not to forego using the service entirely.'' Although one ICS provider asserts that ''service providers compete vigorously with respect to rates'' it is clear from requests for proposals (RFPs) in the record that, at best, end user rates are but one of many factors that correctional facilities use to judge competing bids. The record also indicates that some correctional facilities may base their selection of a contractor largely on the amount of cash and/or in-kind inducement offered rather than being driven by proposals focused on high quality service at the most affordable rates for consumers. In sum, market forces do not appear to constrain ICS rates. Absent Commission action here, it is clear that we will not have met our statutory obligation to ensure that rates are just, reasonable, and fair.

5. Societal Impacts of High ICS Rates

42. Excessive ICS rates also impose an unreasonable burden on some of the most economically disadvantaged in our society. Families of incarcerated individuals often pay significantly more to receive a single 15-minute call from prison than for their basic monthly phone service. We have received tens of thousands of comments from individuals, including many personal stories from inmates, their family members and their friends about the high price of staying in touch using ICS. These rates discourage communication between inmates and their families and larger support networks, which negatively impact the millions of children with an incarcerated parent, contribute to the high rate of recidivism in our nation's correctional facilities, and increase the costs of our justice system. Familial contact is made all the more difficult because ''mothers are incarcerated an average of 160 miles from their last home, so in-person visits are difficult for family members on the outside to manage.''

43. Just, reasonable, and fair ICS rates provide benefits to society by helping to reduce recidivism. The Congressional Black Caucus cites ''a powerful correlation between regular communication between inmates and their families and measurable decreases in prisoner recidivism rates.'' In addition, NARUC formally endorsed ''lower prison phone rates as a step to reduce recidivism and thereby lower the taxpayer cost of prisons.'' As the Center on the Administration of Criminal Law explains, ''a reliable way of decreasing the likelihood that prisoners will re-offend is to foster the growth of a family support structure that gives inmates a stake in the community to which they return and can provide them with the tools and incentives they need to succeed upon release.'' Further, reducing recidivism would provide significant cost savings, as the annual cost to incarcerate one person is estimated at over $31,000 per year or between $60 and $70 billion per year nationwide. Indeed, one study indicates that a one percent reduction in recidivism rates would translate to more than $250 million in annual cost savings across the United States.

44. Just and reasonable interstate ICS rates will produce further societal benefits by providing the justice system with cost savings and improved representation for inmates. Some public defenders and court-appointed lawyers limit the number of collect calls they accept because the cost of calls from correctional facilities has become overly expensive. One commenter states that the cost to one public defenders' office for such collect calls rose to $75,000 in one year alone, while another says that some public defenders ''spend more than $100,000 a year accepting collect calls from prisoners.'' Commenters assert a correlation between lower rates and a lower incidence of contraband

cell phone use in correctional facilities, noting that efforts including ''good security measures for both visitation and perimeter security'' are also contributing factors. Reforms are necessary to ensure that these benefits, which unquestionably are in the public interest and will not be accrued in the absence of ICS rate reform, are realized.

6. Reforms Are Necessary To Ensure That Interstate ICS Rates Are Just, Reasonable, and Fair

45. Based on the record, we conclude that the marketplace alone has not ensured that interstate ICS rates are just and reasonable and that they are fair to consumers, as well as providers. The Commission must therefore take action to establish just, reasonable, and fair rates. As the Commission has previously explained, ''the just and reasonable rates required by Sections 201 and 202 . . . must ordinarily be cost-based, absent a clear explanation of the Commission's reasons for a departure from cost-based ratemaking.'' Thus, although the Commission ''is not required to establish purely cost-based rates,'' it ''must, however, specially justify any rate differential that does not reflect cost.'' The Commission has not previously justified such a departure in the context of ICS rates, nor do we find a basis in this record to do so now. Given our findings above that the rates for ICS frequently are well in excess of the costs reasonably incurred in providing those services, we conclude that the rate reforms we begin in this Order are necessary to ensure they are just and reasonable.

46. Likewise, under section 276, although the Commission has previously found the term ''fairly compensated'' to be ambiguous, and acknowledged that a range of compensation rates could be considered fair, it has evaluated the question with reference to the costs of providing the relevant service, including in the context of ICS. As noted above, the Commission traditionally prefers to rely on market forces, rather than regulation, to constrain rates. Thus, the Commission indicated in 1996 that it preferred to defer to the results of commercial negotiations, and in a 1996 order stated that ''whenever a PSP is able to negotiate for itself the terms of compensation for the calls its payphones originate, then our statutory obligation to provide fair compensation is satisfied.'' There, however, the Commission was focused on fair compensation from the perspective of ensuring that payphone providers received compensation that was not too low. As the Commission has recognized, the concept of fairness encompasses both the compensation received by ICS providers and the cost of the call paid by the end-user. Given the significant record evidence regarding the many exorbitant rates for ICS today, except in areas where states have undertaken reform, continuing to rely upon negotiated agreements in this context will not adequately ensure fairness to the end-user paying the cost of the ICS because evidence is clear that this process does not constrain unreasonably high rates. We thus find the rate reforms begun in this Order are necessary to implement section 276(b)(1)'s ''fair compensation'' directive.

C. Framework for Just, Reasonable, and Fair ICS Rates

47. In this section, we create a new framework to ensure that interstate ICS rates are just and reasonable, as required by section 201(b), and provide fair compensation to providers and consumers of interstate ICS consistent with section 276. We require ICS rates to be cost-based. We identify the costs that are and are not to be included in determining whether a rate is consistent with the statute.

48. We address rates by adopting interim safe harbor rate levels and interim rate caps that work together to ensure that ICS rates are just, reasonable, and fair to both providers and end users. We adopt interim safe harbor interstate rate levels for prepaid and debit calls and separately for collect calls, and we will presume that interstate ICS rates at or below the safe harbors are cost-based and therefore just and reasonable under section 201(b) and fair under section 276. Specifically, we adopt initial interim safe harbor rates of $0.12 per minute for debit and prepaid interstate ICS calls and $0.14 per minute for collect interstate ICS calls. We adopt an interim rate cap of $0.21 per minute for debit and prepaid interstate calls, and $0.25 per minute for collect interstate calls.

49. As of the effective date of this Order, ICS providers' interstate per-minute rates must be at or below the interim rate cap levels. An ICS provider may elect to charge rates at or below the interim interstate safe harbor rates and benefit from a presumption that such rates are just, reasonable, fair, and cost-based. Rates above the safe harbor will not benefit from such a presumption.

1. Interstate ICS Rates and Charges Must Be Cost-Based

50. As discussed above, the Commission typically focuses on the costs of providing the underlying service when ensuring that rates for service are just and reasonable under section 201(b). Likewise, the cost of providing payphone service generally has been a key point of reference when the Commission evaluates rules implementing the fair compensation requirements of section 276(b)(1)(A). In the *2012 ICS NPRM* the Commission sought comment on ways of regulating ICS rates based on the costs of providing ICS. 78 FR 4369, Jan. 23, 2013. Although the Commission theoretically might deviate from such an approach, we find no basis to do so here and conclude that interstate ICS rates, which include per-minute charges, per-call charges, and ancillary charges and other fees charged in connection with such service, must be cost-based.

51. Section 276(b)(1) states that the Commission's regulations implementing that provision should, among other things, ''promote the widespread deployment of payphone services to the benefit of the general public.'' Beyond harming the end users paying ICS rates, excessive ICS rates, and the resulting negative consequences, harm the public more generally. Since cost-based rates help avoid such negative consequences, this statutory language supports our reliance on such an approach. Our mandate to carry out our responsibilities under section 276(b)(1), along with the same underlying policy considerations, likewise persuades us that requiring cost-based interstate ICS rates will best implement section 201(b), as well.

52. We recognize that the term ''cost'' is itself ambiguous, and a range of possible interpretations of this term might be reasonable. For purposes of the interim rules and requirements adopted in this Order, we evaluate whether ICS rates are cost-based by relying on historical costs. We expect that historical cost information will be most readily available to ICS providers for production to the Commission as needed, making this approach readily administrable for purposes of interim rules that will represent an improvement over the *status quo* for interstate ICS rates, while we consider possible further reforms as part of the FNPRM. We discuss in further detail below the types of historical costs that are reasonably and directly related to the provision of ICS to be included in those rates.

2. Costs of Providing Interstate ICS

a. General Standard

53. In this section, we conclude that only costs that are reasonably and directly related to the provision of ICS, including a reasonable share of common costs, are recoverable through ICS rates

consistent with sections 201(b) and 276(b)(1). Such compensable costs would likely include, for example, the cost of capital (reasonable return on investment); expenses for originating, switching, transporting, and terminating ICS calls; and costs associated with security features relating to the provision of ICS. On the other hand, costs not related to the provision of ICS may include, for example, site commission payments, costs of nonregulated service, costs relating to general security features of the correctional facility unrelated to ICS, and costs to integrate inmate calling with other services, such as commissary ordering, internal and external messaging, and personnel costs to manage inmate commissary accounts.

b. Site Commission Payments

54. The Commission has previously held that site commissions are—for purposes of considering ICS rates under section 276—an apportionment of profit, not a cost of providing ICS. In the *2012 ICS NPRM,* the Commission sought comment on its prior conclusion that site commission payments, or ''location rents are not a cost of payphones, but should be treated as profit.'' 78 FR 4369, Jan. 23, 2013. Site commission payments are not costs that are reasonably and directly related to the provision of ICS because they are payments made to correctional facilities or departments of corrections for a wide range of purposes, most or all of which have no reasonable and direct relation to the provision of ICS. After carefully considering the record, we reaffirm the Commission's previous holding and conclude that site commission payments are not part of the cost of providing ICS and therefore not compensable in interstate ICS rates.

55. We disagree with commenters who argue that site commission payments should be treated as compensable ICS cost for the purpose of determining whether rates are just or reasonable under section 201(b). These commenters argue that the analysis conducted by the Commission with respect to fair compensation under section 276 for payphone providers is fundamentally different from determining whether a service provider's rates comply with section 201(b). We need not determine whether the standards for determining compliance with section 276 and section 201(b) are identical because under the ''fair compensation'' requirement of section 276 or the ''just and reasonable'' requirement of section 201(b), we reach the same conclusion: site commission payments are not a compensable category of ICS costs because they are not costs that are reasonably and directly related to provision of ICS. While we appreciate the view that these excess revenues are paid to correctional facilities and thus may not be ''profits'' to ICS providers in the sense that they can keep these excess revenues and use them for whatever purpose they like, they are excess revenues above costs nonetheless. This argument is analogous to that considered in the *USF/ICC Transformation Order,* where the Commission determined that ''excess revenues that are shared in access stimulation schemes provide additional proof that the LEC's rates are above cost.'' There, the Commission concluded that ''how access revenues are used is not relevant in determining whether switched access rates are just and reasonable in accordance with section 201(b).'' The same principle applies here: the fact that payments from excess revenues are made to correctional facilities is not relevant in determining whether ICS rates are cost-based and thus just, reasonable, and fair under sections 201(b) and 276. Moreover, even if site commission payments are viewed as a cost rather than as excess revenues, they still would not be reasonably and directly related to the provision of ICS because, as noted above, they are simply payments made for a wide range of purposes, most or all of which have no reasonable and direct relation to the provision of ICS.

56. We also disagree with ICS providers' assertion that the Commission must defer to states on any decisions about site commission payments, their amount, and how such revenues are spent. We do not conclude that ICS providers and correctional facilities cannot have arrangements that include site commissions. We conclude only that, under the Act, such commission payments are not costs that can be recovered through interstate ICS rates. Our statutory obligations relate to the rates charged to end users—the inmates and the parties whom they call. We say nothing in this Order about how correctional facilities spend their funds or from where they derive. We state only that site commission payments as a category are not a compensable component of interstate ICS rates. We note that we would similarly treat ''in-kind'' payment requirements that replace site commission payments in ICS contracts.

57. The record reflects that site commission payments may be used for worthwhile causes that benefit inmates by fostering such objectives as education and reintegration into society. Law enforcement and correctional facilities assert that some or all of these programs would cease or be reduced if commission payments were not received as no other funding source would be available. Although these causes may contain worthy goals, we are bound by our statutory mandate to ensure that end user rates are ''just and reasonable,'' and ''fair,'' taking into account end users as well as ICS providers. The Act does not provide a mechanism for funding social welfare programs or other costs unrelated to the provision of ICS, no matter how successful or worthy.

58. We also are cognizant of the critical security needs of correctional facilities. For example, the U.S. Department of Justice has chronicled hundreds of criminal convictions involving the use of ICS as part of the criminal activity. Moreover, according to one commenter, a disproportionately large percentage of ICS-enabled crimes target and victimize vulnerable populations consisting of victims, witnesses, jurors, inmates, and family members of these individuals. While our actions to establish interim ICS safe harbors and rate caps prohibit the recovery of site commission payments, we include costs associated with security features in the compensable costs recoverable in ICS rates. Security monitoring helps correctional facilities identify potential altercations; monitor inmates who the facility is concerned may be suicidal; prevent criminal activity outside of the jail; prevent violation of no-contact orders and witness tampering; and aid in the prosecution of criminal cases. Our actions in this Order take into account security needs as part of the ICS rates as well as the statutory commitment to fair compensation. Indeed, data from facilities without site commission payments, which form the basis for our interim safe harbor rates, demonstrate the feasibility of providing ICS on an on-going basis to hundreds of thousands of inmates without compromising the levels of security required by these states' correctional facilities. Our interim rate caps are based on cost studies that include the cost of advanced security features such as continuous voice biometric identification.

3. Interim Interstate Rate Levels

59. In the *2012 ICS NPRM,* the Commission sought comment not only on various rate cap alternatives, but also on other possible ways of regulating ICS rates, as well as any other proposals from parties. 78 FR 4369, Jan. 23, 2013.

Below, we adopt interim rate caps that include interim safe harbors setting boundaries for rates that will be treated as lawful absent a Commission decision to the contrary, and serve to minimize regulatory burdens on ICS providers. The interim rate cap framework we adopt enables providers to charge cost-based rates up to the interim rate caps.

a. Interim Safe Harbors for Interstate ICS Rates

60. We adopt interim safe harbor rates of $0.12 per minute for debit and prepaid interstate ICS calls and $0.14 per minute for collect interstate ICS calls. Rates at or below these interim interstate safe harbor rate levels will be treated as lawful, *i.e.,* just and reasonable under section 201(b) of the Act and ensuring fair compensation under section 276(b)(1)(A) of the Act, unless and until the Commission makes a finding to the contrary. Providers will have the flexibility to take advantage of the interim safe harbor rates if they so choose. Providers that elect to take advantage of the safe harbors will enjoy the presumption that their rates are lawful and will not be required to provide refunds in any complaint proceeding.

(i) Methodology for Setting Interim Safe Harbor Per-Minute Rate Levels

61. We base our methodology for setting conservative interim interstate ICS safe harbor rate levels on our analysis of rate data in the record. In particular, the record includes detailed data on interstate ICS rates charged by ICS providers serving various types of correctional facilities. Specifically, HRDC filed detailed and comprehensive 2012 ICS rate data for virtually all of the state departments of corrections in the country. We conclude that these data provide a reasonable basis for establishing safe harbor rates that are intended to approximate the costs of providing interstate ICS—costs that include fair compensation (including a reasonable profit) and include full recovery for security features the correctional facilities have determined to be necessary to protect the public safety. Further, these safe harbor rates are validated by other evidence in the record.

62. The comprehensive rate data submitted by HRDC include data for seven states that have excluded site commission payments from their rates. Rates in every state, including the non-commission states, were included by ICS providers in their bids for state ICS contracts, such that we can presume that they are high enough to cover the providers' costs. We find that this subset of rates, derived from states that have eliminated site commissions and maintained adequate security, is the most relevant to our approach to determining the costs that should still be recoverable through interstate ICS rates. The subset provides a reasonable basis for establishing a conservative proxy for cost-based rates. We set our interim safe harbor at conservative levels to account for the fact that there may be cost variances among correctional facilities.

63. We first derive an interim safe harbor rate for interstate ICS debit and prepaid calls. We establish a single rate for both debit and prepaid calls, given the evidence that costs for both billing approaches are substantially similar. We begin by calculating the average per-minute interstate ICS debit and prepaid call rates of the seven identified state departments of corrections. We assume a call duration of 15 minutes for purposes of our calculation. We then total the charges for a 15-minute call for each state, taking into account per-minute as well as per-call charges. We divide that total by 15 to calculate an average per-minute rate for each state. Finally, we average those per-minute rates across the seven relevant states. This calculation results in an average rate of $0.1186 per minute for a 15-minute debit call. We similarly calculate the same states' prepaid interstate ICS calling rates, to obtain an average prepaid rate of $0.1268 per minute. Given the similarities of debit and prepaid charges, we group the two into a single category and average those rates to obtain an overall per minute average of $0.1227, which we round to $0.12 per minute. We therefore adopt $0.12 as the safe harbor per minute rate for interstate ICS debit and prepaid calls. As described in more detail below, ICS providers have the flexibility to satisfy the safe harbor either by certifying that the per-minute rate is at or below the safe harbor or by demonstrating that their total charge for a 15-minute call is at or below the safe harbor per-minute rate times 15.

64. We derive a corresponding interim safe harbor rate level for interstate ICS collect calls by utilizing the data provided by HRDC for the interstate ICS collect calling rates for the same set of states. Employing the same methodology utilized by ICS debit and prepaid calls, we determine the average rate for a 15-minute interstate ICS collect call for these states to be $0.1411 per minute, which we round to $0.14 per minute. We therefore adopt $0.14 per minute as the safe harbor rate for interstate ICS collect calls.

65. Other data in the record further validate that the interim interstate safe harbor rates we establish here are just, reasonable, and fair. In addition to being higher than rates currently charged by several state departments of corrections without site commissions, our $0.12 per minute safe harbor debit call rate is at or above the rate that would result if site commissions were deducted from the rates in ten states that allow them. Similarly, there are nine states with site commission payments in their rates whose interstate ICS collect rates are at or below our $0.14 per minute safe harbor collect call rate when their commissions are deducted. Additionally, our interim safe harbor rate levels closely approximate the rates currently being charged in ICE-dedicated facilities.

66. Data in the record on the demand stimulation effects of lower rates further validate the conservative nature of our safe harbor rates and the likelihood that the safe harbors will provide fair compensation to ICS providers. There is general agreement in the record that lower rates will stimulate additional ICS usage, which will help to offset any revenue declines ICS providers might experience from lower rates. For example, petitioners cite an immediate increase in call volume of 36 percent following a significant reduction of ICS rates by New York in 2007. The New York State Department of Corrections and Community Supervision reported that call volumes continued to increase following their ICS rate reductions—from a total of 5.4 million calls in 2006 to an estimated 14 million calls in 2013—an increase of approximately 160 percent. Also, Telmate reported a 233 percent increase in call volume in one state when it brought its interstate ICS rates down to the $0.12 per minute level of its local ICS rates. Telmate also saw an increase of up to 300 percent in call volume when it lowered its rates elsewhere. Given the largely fixed cost nature of the ICS industry, call volume increases are likely to generate significant revenues for ICS providers without resulting in significant cost increases. Such revenue increases are likely to offset in part the revenue declines ICS providers might otherwise experience from lower rate levels.

67. *Other Methodologies.* We find that using comprehensive state rate data to establish the interim safe harbor rates is preferable to other methodologies proposed in the record. For example, Petitioners propose a rate-setting methodology that combines an analysis of prevailing non-ICS prepaid calling card rates with estimates of the additional costs necessary to provide

ICS. Using their methodology, Petitioners propose a per-minute rate of $0.07 for both collect and debit interstate ICS calls. Other commenters support Petitioners' approach. Some ICS providers, however, oppose Petitioners' proposal, stating that interstate ICS is not comparable to prepaid calling card services and that basing a methodology on such an assumption could preclude ICS providers from being fairly compensated. Some claim that the rate levels proposed by Petitioners, if adopted, would undermine ICS providers' financial viability. We do not find on the basis of this record that using commercial prepaid calling card rates is a reasonable starting point for calculating ICS calling rates given the significant differences between the two services, most notably, security requirements. Further, Petitioners' proposed methodology relies on combining prepaid calling card rates with ICS providers' costs. Because the two sets of data are not necessarily related, it would be difficult for us to adopt this methodology as the basis for our rates without further explanation.

68. We also decline to base our safe harbor rates on the call volume, cost, commission, and revenue data submitted by Securus or the cost data submitted by CenturyLink. While Securus' data provide some insight into the costs of its ICS operations, we have concerns about relying entirely on these data to calculate rates, in part because Securus did not provide the disaggregated data used to derive the report's total cost results, and the data it submitted did not distinguish between collect, debit, or prepaid calls. Similarly, consistent with our discussion below, we decline to base our safe harbors on the cost data CenturyLink submitted given the absence of underlying data, the lack of a description of its methodology, and the lack of a distinction between debit, prepaid and collect calling costs.

69. *Additional Considerations.* We disagree with concerns that it is not feasible to adopt uniform rates for all correctional facilities, particularly with regard to the safe harbors we are establishing here. Our safe harbors are not binding rates but are designed to give providers that elect to use them an administratively convenient pricing option that offers a rebuttable presumption of reasonableness. If providers serving jails or other facilities with different cost characteristics do not choose to use them, they may price their service up to the rate caps we establish below or seek a waiver of those caps. Ultimately, we believe that the safe harbors are set at levels that are likely to ensure fair compensation for providers serving a significant proportion of inmates. Accordingly, we find that it is reasonable to establish a uniform set of interim safe harbor rate levels for providers serving different sizes and types of correctional facilities. Ultimately, we conclude that by setting the interim safe harbor rates at reasonable levels and providing flexibility to providers implementing the rates, including the ability to charge cost-based rates up to the interim rate cap, our interim interstate safe harbor rates will ensure that ICS providers are fairly compensated.

70. Because we find that the interim safe harbor rates we establish here will provide fair compensation to ICS providers and will encourage continued investment and deployment of ICS to the general public, we do not find persuasive the assertion that regulation of interstate ICS would negatively impact ICS providers generally, possibly even curtailing ICS access. Rather, our finding is supported by the fact that many state departments of correction make ICS available to inmates at rates lower than those we implement here and nonetheless operate in a safe, secure, and profitable manner. Moreover, testimony in our record indicates that following a legislative mandate to lower rates in New Mexico, the New Mexico Corrections Department released an RFP for ICS that prescribed even lower rates than those adopted in the state's reform proceeding. ICS continues to be made available to inmates even at these lower rates.

71. Additionally, by using existing rates from states that have prohibited site commission payments to derive the interim safe harbors, we believe that our reforms will not impact security or innovation in the ICS market. Indeed, we note that innovation will continue to drive down costs through automation and centralization of the security features correctional facilities require. Some commenters have raised concerns that decreasing ICS rates will result in a lower quality of service for inmate calling. As we discuss above, the interim safe harbor levels and rate caps we adopt today are conservative numbers. Accordingly, we believe the rate framework we adopt today should not negatively impact quality of service. For example, ICE has rates for all long distance calls for their detainees on par with those we adopt today, and concurrently includes quality of service standards, in addition to a 25 to 1 ratio of detainees to operable telephones. We encourage continued innovation and efficiencies to improve the quality of service for ICS.

72. In summary, on the effective date of this Order, which is 90 days following its publication in the **Federal Register**, all rates, fees, and ancillary charges for interstate ICS must be cost-based. ICS providers that elect to utilize the safe harbor to establish cost-based interstate ICS rates as of that date must lower their interstate ICS rates to or below $0.12 per minute for debit and prepaid interstate calls and $0.14 per minute for collect interstate calls for their rates to be presumed to be just, reasonable and fair. Separately, in the accompanying Further Notice we seek comment on adopting permanent safe harbors.

b. Interim Rate Caps for Interstate ICS Rates

73. We adopt interim rate caps to place an upper limit on rates providers may charge for interstate ICS. As explained below, the interim rate caps we establish are $0.21 per minute for debit and prepaid interstate calls and $0.25 per minute for collect interstate calls. We adopt the interim rate caps to provide immediate relief to consumers. As of the effective date of this Order (90 days after **Federal Register** publication), providers' rates for interstate ICS must be at or below these levels.

74. We believe that the rate caps we establish here are set at sufficiently conservative levels to account for all costs ICS providers will incur in providing ICS pending our further examination of such costs through the accompanying FNPRM and data collection. The interim rate caps we establish are not a finding of cost-based ICS rates because we use the highest costs in the record, which include the costs of advanced ICS security features, to set an upper bound for interstate rates that will be subject to cost justification. We also establish a waiver process to accommodate what we expect to be the rare provider that can demonstrate that recovery of its ICS costs requires rates that exceed our caps.

(i) Methodology for Establishing Interim Rate Caps

75. To establish interim interstate ICS rate caps, we identify the relevant ICS provider cost data available in the record, which consists principally of the ICS Provider Data Submission, cost filings by Pay Tel (an ICS provider that exclusively serves jails), Securus, and CenturyLink (ICS providers that serve a variety of type and sizes of correctional facilities). In 2008, the ICS Provider Data Submission identified the cost of debit and the adjusted cost of collect

ICS calls as being $0.164 per minute and $0.246 per minute, respectively, assuming a 15-minute call duration. Both Pay Tel and Securus were participants in the 2008 study. In its recent cost study, Pay Tel reports average actual and projected costs for debit and collect ICS calls of $0.208 per minute and $0.225 per minute, respectively, inclusive of additional fees for continuous voice biometric identification service, or $0.189 and $0.205 per minute without such costs. Securus submitted total cost data for a subset of the facilities it serves that on a minute-weighted basis averaged $0.044 per minute for all types of calls. CenturyLink also submitted summary ICS cost data. All these costs were reported excluding site commission payments.

76. *Debit and Prepaid Call Rate Cap.* We establish an interim rate cap for debit and prepaid interstate ICS calls of $0.21 per minute based on the public debit call cost data included in Pay Tel's cost submission. The costs reported by Pay Tel for debit calling represent the highest, total-company costs of any data submission in the record and therefore represent a conservative approach to setting our interim debit and prepaid rate cap. Specifically, Pay Tel reported that the average of its actual and projected 2012–2015 debit calling costs, excluding commissions and including continuous voice biometric identification fees, is $0.208 per minute. While Pay Tel's cost data are characterized by certain limitations, we conclude that Pay Tel's public cost submission provides a sound basis to derive the conservative high-end estimate that we use to set the debit and prepaid interim rate cap. This is true for a number of reasons.

77. First, this interim rate cap for debit calls is significantly higher than the per-minute cost for debit calling reported in the 2008 ICS Provider Data Submission ($0.164 per minute, assuming a 15-minute call duration) or by Securus ($0.044 per minute for all call types). The 2008 ICS Provider Data Submission is the only multi-provider cost sample in the record and includes debit call cost data from locations with varying cost and call volume characteristics, and is $0.05 per minute lower than our interim debit and prepaid rate cap. The interim rate cap is also significantly higher than the cost study submitted by Securus. Second, Pay Tel serves jails exclusively, which are generally smaller and which providers claim are more costly to serve than prisons. As a result, we expect that the rates of most facilities, whether jails or prisons, large or small, should fall below this rate. Third, we include Pay Tel's estimated *increases* in cost projections used to calculate our rate caps, despite record evidence showing that many ICS costs are significantly *decreasing*. We thus accept at face value Pay Tel's projected costs—costs that it reports to be increasing—which may include costs that we would conclude, after a thorough review, may not be related to the provision of ICS, and costs that it may have the incentive to overstate as the Commission evaluates reform. Finally, we note that Pay Tel's and all ICS providers' transport and termination costs will continue to decline pursuant to the Commission's intercarrier compensation reform, further reducing the cost of providing the transport and termination of ICS. For all these reasons, we find Pay Tel's debit calling cost data to be an appropriately conservative basis for our debit and prepaid rate cap and adopt a $0.21 per minute interim rate cap for debit and prepaid interstate ICS calls.

78. *Collect Call Rate Cap.* We use a similar approach to establish the $0.25 per minute interim rate cap for interstate ICS collect calls. The costs reported by the ICS Provider Data Submission represent the highest costs of any data submitted in the record and represent a conservative approach to setting our interim collect rate cap. Specifically, the ICS Provider Data Submission reported an effective per minute cost for ICS collect calls of $0.246 per minute, assuming a 15-minute call duration. We base our collect call rate cap on this record information and note that this cost is higher than both Pay Tel's and Securus' reported costs of collect calls ($0.225 per minute for collect calls and $0.124 per minute for all calls, respectively). Additionally, we take a conservative approach by setting the rate caps above the level we believe can be cost-justified while the Bureau reviews ICS provider rates and cost data submitted pursuant to the data collection and evaluates the record in response to the Further Notice.

79. The 2008 ICS Provider Data Submission represents an appropriately conservative foundation for our collect call rate cap. These data represent the highest cost of a per-minute collect call in the record, and includes cost data from locations with varying cost and call volume characteristics. The ICS Provider Data Submission states that its purpose is to ''[p]rovide the basis for rates'' and to ''[p]rovide cost information necessary to develop cost-based rate levels and rate structures.'' Although from five years ago, the record indicates continued support for such data, and, as an ICS provider-submitted cost study, it presumably ensures fair compensation to ICS providers.

80. We find that the 2008 ICS Provider Data Submission on which we base our interim ICS collect rate cap likely overstates ICS providers' costs in a number of respects. First, costs to provide interstate ICS have, by many measures, declined since the ICS provider data was submitted. Second, smaller, potentially higher-cost facilities are over-represented in the data submission's sample, as compared with the national distribution of sizes of correctional facilities. Third, the sample does not include cost data from the largest ICS provider, which cites economies of scale and efficiencies that it claims it enjoys, making it one of the lowest cost ICS providers. The ICS Provider Data Submission also uses a marginal location analysis similar to an analysis that the Commission has used in the past to calculate payphone rates and some commenters assert this data tends to overcompensate ICS providers. Moreover, the rate is above the costs reported by Pay Tel, a provider serving exclusively smaller facilities and jails. Further, as we noted above, all ICS providers' transport and termination costs will continue to decline pursuant to the Commission's intercarrier compensation reform, further reducing interstate ICS providers' costs. Finally, the record supports the notion that lower rates will increase call volumes, providing an additional offset to compensation foregone as a result of lower rates.

81. We disagree with commenters who assert it is not feasible to adopt uniform rates—in this instance our rate caps—for correctional facilities generally. We base our rate caps on the highest cost data available in the record, which we anticipate will ensure fair compensation for providers serving jails and prisons alike. We note that ICS providers themselves submitted a single set of costs for the multiple providers participating in the ICS Provider Data Submission, regardless of the differing sizes of the correctional institutions they served. Petitioners assert that ''technical innovations in the provision of prison phone services imply that variation in costs at different facilities has largely been eliminated.'' Further, the Commission previously has set a uniform rate for other interstate telecommunications services, including for public payphones, the costs of which also vary by location. Moreover, even if we were to attempt to differentiate our rate caps on the basis of size or type of correctional facility, the record contains conflicting assertions as to what those distinctions should be. Some assert we

should distinguish between jails and prisons, while at least one other commenter advocates distinguishing between larger and smaller jails and between prison, jails and other ''specialty locations.'' Given the interim nature of our rate caps and the accompanying Further Notice, providers and other parties will have ample opportunity to assert that we should establish different rate caps for different types of providers and more precisely on what those distinctions should be based.

(ii) Waivers

82. An ICS provider that believes that it has cost-based rates for ICS that exceed our interim rate caps may file a petition for a waiver. Such a waiver petition would need to demonstrate good cause to waive the interim rate cap. As with all waiver requests, the petitioner bears the burden of proof to show that good cause exists to support the request. The following factors may be considered in a request to waive the interim rate caps: costs directly related to the provision of interstate ICS and ancillary services; demand levels and trends; a reasonable allocation of common costs shared with the provider's non-inmate calling services; and general and administrative cost data.

83. We reiterate that the interim rate caps are set at conservative levels. Accordingly, we expect that petitions for waiver of the interim rate caps would account for extraordinary circumstances. Further, we will evaluate waivers at the holding company level. We conclude that reviewing ICS rates at the holding company level is reasonable for several substantive and administrative reasons. First, the centralization of security and other functionalities provided by ICS providers that serve multiple correctional facilities has significantly reduced the cost incurred on an individual facility for some providers. Moreover, the record indicates that ICS providers often obtain exclusive contracts for several facilities in a state, rather than specific rates per facility. Second, we have adopted interim interstate safe harbor rates and interim interstate rate caps at conservative levels to ensure that all providers are fairly compensated. As a result, we believe it is appropriate to evaluate waivers at a holding company level to obtain an accurate evaluation of the need for a waiver. Additionally, reviewing petitions in this manner is significantly more administratively feasible and will allow the Commission to address waiver petitions more expeditiously. Unless and until a waiver is granted, an ICS provider may not charge rates above the interim rate cap and must comply with all aspects of this Order including requirements that ancillary services charges must be cost-based as described.

84. We delegate to the Wireline Competition Bureau (Bureau) the authority to request additional information necessary for its evaluation of waiver requests and to approve or deny all or part of requests for waiver of the interim rate caps adopted herein. We note that evaluation of these waiver requests will require rate setting expertise, and that the Bureau is well suited to timely consider any waiver requests that are filed. Because we will consider waiver requests on a holding company basis, waiver requests from the three largest ICS providers would cover over 90 percent of ICS provided in the country. ICS provider waiver petitions may be accorded confidential treatment as consistent with rule 0.459.

c. Interim Rate Structure

85. Some ICS rates include per-call charges—charges that are incurred at the initiation of a call regardless of the length of the call. The record indicates concerns that these per-call charges are often extremely high and therefore unjust, unreasonable, and unfair for a number of reasons. First, it is self-evident that per-call charges make short ICS calls more expensive particularly if evaluated at the effective per-minute rate. For example, several state departments of correction allow $3.95 per-call and $0.89 per-minute charges for collect interstate ICS calls. Under such an arrangement, the effective *per minute* rate for a one minute call is $4.84, whereas the effective *per minute* rate for a 15 minute call is $1.15, making the price for a shorter call disproportionately high. Second, commenters raise issues regarding per-call charges that may be unjust, unreasonable, and unfair because callers are often charged more than one per-call charge for a single conversation when calls are dropped, which the record reveals can be a frequent occurrence with ICS. Although some ICS providers contend that calls are usually terminated when callers attempt either to set up a three-way call or to forward calls, practices that are generally prohibited by correctional facilities, other commenters maintain that calls are dropped because of faulty call monitoring software or poor call quality, leaving consumers no alternative but to pay multiple per-call charges for a single conversation. Finally, some commenters question whether high per-call charges are justified by cost. In particular, Petitioners state that ''[t]here are very few cost components that change with the number of call initiations and that do not vary with the length of the call,'' and recommend eliminating per-call charges.

86. We are concerned about the evidence regarding current per-call rates and associated practices. In particular, we are concerned that a rate structure with a per-call charge can impact the cost of calls of short duration, potentially rendering such charges unjust, unreasonable and unfair. We have particular concerns when calls are dropped without regard to whether there is a potential security or technical issue, and a per-call charge is imposed on the initial call and each successive call. As a result, we conclude that unreasonably high per-call charges and/or unnecessarily dropped calls that incur multiple per-call charges are not just and reasonable.

87. At the same time, we recognize that states that have reformed ICS rates and rate structures have addressed such concerns in different ways. Indeed, not all such states have eliminated per-call charges. Some have significantly reduced or capped such costs in seeking to bring the overall cost of a call to just, reasonable and fair levels. Many of these pioneering state efforts form the foundation of the initial reforms we adopt today, and we are reluctant to disrupt those efforts pending our further evaluation of these issues in the Further Notice. As a result, we do not prohibit all per-call charges in this Order. Nonetheless, because our questions about the ultimate necessity and desirability of per-call charges remain, particularly as we seek comment on further reforming ICS rates more generally, we ask questions about whether rate structure requirements are necessary to ensure that the cost of a conversation is reasonable in the Further Notice. We also require ICS providers to submit data on the prevalence of dropped calls and the reason for such dropped calls as part of their annual certification filing.

88. Our interim rate structure will help address concerns raised about unreasonable per-call charges while we consider further reforms in the Further Notice. As described above, we adopt interim safe harbor rate levels and interim rate caps to ensure the overall cost of a 15-minute call is just, reasonable, and fair. ICS providers have the flexibility to satisfy the safe harbor either through a certification that the per-minute rate is at or below the safe harbor, or by demonstrating that the cost of a 15-minute call (including any per-

connection charges) is at or below the safe harbor per-minute rate times 15. Thus, where an ICS provider elects to take advantage of the interim safe harbor rate levels described above, we allow the provider flexibility to determine whether its rate structure should include per-call charges. Specifically, we allow ICS providers to calculate whether their rates are at or below the interim safe harbor levels or the interim rate caps by calculating their compliance on the basis of a 15-minute call. Because our interim safe harbors constrain the cost of a 15-minute conversation to a level we find to be just, reasonable, and fair, we find it is appropriate to afford ICS providers such flexibility.

89. Providers electing not to use the safe harbor but to charge rates at or below the interim rate cap will have similar flexibility but will not benefit from the presumption that the rates and charges are just and reasonable and, as a result, could be required to pay refunds in any enforcement action.

d. Ancillary Charges

90. In the *2012 ICS NPRM,* the Commission observed that ''there are outstanding questions with prepaid calling such as: how to handle monthly fees; how to load an inmate's account; and minimum required account balance.'' 78 FR 4369, Jan. 23, 2013. The record indicates that ICS providers also impose ancillary or non-call related charges on end users to make ICS calls, for example to set up or add money to a debit or prepaid account, to refund any outstanding money in a prepaid or debit account, or to deliver calls to a wireless number. These additional charges represent a significant cost to consumers. For example, prepaid account users who accept calls from prisoners and detainees in certain facilities may incur a $4.95 monthly ''inactivity fee'' if their account ''exceeds 180 days of no call activity until the funds have been exhausted or the call activity resumes.'' End users may also be assessed a $4.95 fee to close their account, and a $4.95 ''refund fee'' when requesting a refund of money remaining in an account. We question whether such charges are reasonable in and of themselves and note that the levels of such charges do not appear to be cost-based.

91. Although we are unable to find ancillary charges per se unreasonable based on the record, we have sufficient information and authority to reach several conclusions regarding ancillary charges. First, as stated earlier, interstate ICS rates must be cost-based, and to be compensable costs must be reasonably and directly related to provision of ICS. Ancillary service charges are no exception; they also fall within this standard and the Commission has the jurisdiction and authority to regulate them. Section 201(b) of the Act requires that ''all charges, practices, classifications, and regulations for and *in connection with''* communications services be just and reasonable. Section 276 of the Act defines ''payphone service'' to encompass ''the provision of inmate telephone service in correctional institutions, and any *ancillary* services,'' and requires that providers be ''fairly compensated.'' The services associated with these ancillary charges are ''in connection with'' the inmate payphone services for purposes of section 201(b) and ''ancillary'' for purposes of section 276. As such, they fall within the standards we articulate above for determining which costs are compensable through interstate ICS rates. Therefore, even if a provider's interstate ICS rates are otherwise in compliance with the requirements of this Order, the provider may still be found in violation of the Act and our rules if its ancillary service charges are not cost-based.

92. Therefore, parties concerned that any ancillary services charge is not just, reasonable and fair can challenge such charges through the Commission's complaint process. The ICS provider will have the burden of demonstrating that its ancillary services charges are just, reasonable, and fair. We also caution ICS providers that the Bureau will review data submissions critically to ensure that providers are not circumventing our reforms by augmenting ancillary services charges beyond the costs of providing such services.

93. In addition, we will take additional steps to gather further information that will inform how we address ancillary services. As part of the mandatory data request we initiate below, we require ICS providers to submit information on every ancillary services charge, and identify the cost basis for such charges. In our accompanying Further Notice, we seek comment on additional steps the Commission can take to address ancillary services charges and ensure that they are cost-based. We note that section 201 governs unjust and unreasonable practices and section 276 governs payphones, which expressly includes ancillary services, and seek comment in the Further Notice as to whether the imposition of ancillary services charges is a just, reasonable, and fair practice.

D. Inmate Calling Services for the Deaf and Hard of Hearing

94. The Commission sought comment in the *2012 ICS NPRM* on deaf or hard of hearing inmates' access to ICS during incarceration. 78 FR 4369, Jan. 23, 2013. Our actions today will be of significant benefit to deaf and hard of hearing inmates and their families. First, the per-minute rate levels we adopt in this Order will result in a significant rate reduction for most, if not all, interstate calls made by deaf and hard of hearing inmates.

95. Second, we clarify that ICS providers may not levy or collect an additional charge for any form of TRS call. Such charges would be inconsistent with section 225 of the Act, which requires that ''users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination.''

96. Third, we seek comment in the Further Notice below on additional issues relating to ICS for the deaf and hard of hearing, including: (i) Whether and how to discount the per-minute rate for ICS calls placed using TTYs, (ii) whether action is required to ensure that ICS providers do not deny access to TRS by blocking calls to 711 and/or state established TRS access numbers, (iii) the need for ICS providers to receive complaints on TRS service and file reports with the Commission, and (iv) actions the Commission can take to promote the availability and use of Video Relay Service (VRS) and other assistive technologies in prisons.

97. We decline to take other actions related to deaf and hard of hearing inmates requested by commenters at this time. While we strongly encourage correctional facilities to ensure that deaf and hard of hearing inmates are afforded access to telecommunications that is equivalent to the access available to hearing inmates, we decline at this time to mandate the number, condition, or physical location of TTY and other TRS access technologies (*e.g.,* devices and/or applications used to access VRS) or the times they are physically available to inmates, allowed call durations for deaf and hard of hearing inmates, or the types of TRS access technologies made available to inmates.

E. Existing ICS Contracts

1. Background

98. The record indicates that contracts for the provision of ICS usually are

exclusive contracts between ICS providers and correctional facilities to serve the relevant correctional facility. The ICS end users (*i.e.,* the inmates and outside parties with whom they communicate via ICS) are not parties to such agreements. Contracts between ICS providers and facilities typically establish an initial term of three to five years, with one-year extension options. Such contracts may include change-of-law provisions, although some such provisions can be vague. In the *2012 ICS NPRM,* the Commission sought comment on whether it would be appropriate to mandate a ''fresh look'' period for existing contracts, or whether any new ICS rules should apply only to contracts entered into after the adoption of the new rules. 78 FR 4369, Jan. 23, 2013. The Commission also sought comment on typical ICS contract terms, as well as how change-of-law contract provisions would interact with any new Commission rules or obligations.

99. The record in response was mixed. Several commenters advocate for a ''fresh look'' period to review and renegotiate existing contracts; some urge us to avoid delaying rate reform; and others assert that any new rules should apply only to contracts entered into after the effective date of the rules.

2. Discussion

100. The reforms we adopt today are not directed at the contracts between correctional facilities and ICS providers. Nothing in this Order directly overrides such contracts. Rather, our reforms relate only to the relationship between ICS providers and end users, who, as noted, are not parties to these agreements. Our statutory obligations require us to ensure that rates and practices are just and reasonable, and to ensure that payphone compensation is fair both to end users and to providers of payphone services, including ICS providers. We address, for example, ICS providers' responsibility to charge just, reasonable and fair rates to inmates and the friends and family whom they call via ICS, and we find that certain categories of charges and fees are not compensable costs of providing ICS reasonably and directly related to the provision of ICS and hence may not be recovered in ICS rates.

101. Agreements between ICS providers and correctional facilities—to which end users are not parties—cannot trump the Commission's authority to enforce the requirements of the Communications Act to protect those users within the Commission's jurisdiction under sections 201 and 276. We thus do not, by our action, explicitly abrogate any agreements between ICS providers and correctional facilities. To the extent that any particular agreement needs to be revisited or amended (a matter on which we do not take a position), such result would only occur because agreements cannot supersede the Commission's authority to ensure that the rates paid by individuals who are not parties to those agreements are fair, just, and reasonable.

102. To the extent that any contracts are affected by our reforms, we strongly encourage parties to work cooperatively to resolve any issues. For example, ICS providers could renegotiate their contracts or terminate existing contracts so they can be rebid based on revised terms that take into account the Commission's requirements related to inmate phone rates and services. We find that voluntary renegotiation would be in the public interest, and observe that the record reflects that, at least in some instances, contracts between ICS providers and correctional and detention facilities are updated and amended with some regularity. To the extent that the contracts contain ''change of law'' provisions, those may well be triggered by the Commission's action today. We further note that the reforms we adopt today will not take effect immediately but, rather, will take effect 90 days after the Order and FNPRM are published in the **Federal Register**. Parties therefore will have time to renegotiate contracts or take other appropriate steps.

F. Commission Action Does Not Constitute a Taking

103. We reject arguments that our reforms adopted herein effectuate unconstitutional takings. It is well established that the Fifth Amendment does not prohibit the government from taking lawful action that may have incidental effects on existing contracts. Although we do not concede that any incidental effects would ''frustrate'' the contractual expectations of ICS providers, even if that were the case, such ''frustration'' would not state a cognizable claim under the Fifth Amendment. In *Huntleigh USA Corp. v. United States,* for instance, the court found that Congress's decision to create the Transportation Security Agency ''had the effect of 'frustrating' [a private security company's] business expectations, which does not form the basis of a cognizable takings claim.'' The court reached this finding even though the relevant legislation effectively *eliminated* the market for private screening services. Here, far from eliminating the ICS market, our regulations are designed to allow providers to recover their costs of providing ICS, including a reasonable return on investment. In this context, any incidental effect on providers' contractual expectations does not constitute a valid property interest under the Fifth Amendment.

104. Moreover, even assuming, *arguendo,* that a cognizable property interest could be demonstrated by ICS providers, we still conclude that our actions would not give rise to unconstitutional takings without just compensation. As an initial matter, our ICS regulations do not involve the permanent condemnation of physical property and thus do not constitute a *per se* taking. Nor do our actions represent a regulatory taking. The Supreme Court has stated that in evaluating regulatory takings claims, three factors are particularly significant: (1) The economic impact of the government action on the property owner; (2) the degree of interference with the property owner's investment-backed expectations; and (3) the ''character'' of the government action. None of these factors suggests a regulatory taking here.

105. First, our regulation of end-user ICS rates and charges will have minimal adverse economic impact on ICS providers. As explained elsewhere in this Order, ICS providers are entitled to collect cost-based rates and will have opportunities to seek waivers to the extent the framework adopted in this Order does not adequately address their legitimate costs of providing ICS. Under these circumstances, any cognizable economic impact will not be sufficiently significant to implicate the takings clause. Even beyond that, the record supports the notion that lower rates are likely to stimulate additional call volume, enabling ICS providers to offset some of the impacts of lower rates without incurring commensurate added costs.

106. Second, our actions do not improperly impinge upon investment-backed expectations of ICS providers. The Commission has been examining new ICS regulations for years, and various proposals—including rate caps and the elimination of compensation in ICS rates for site commissions—have been raised and debated in the record. In addition, some states have already taken action consistent with what we adopt here today. Given this background, any investment-backed expectations cannot reasonably be characterized as having been upset or impinged by our actions today.

107. Third, our action today substantially advances the legitimate governmental interest in protecting end-user consumers from unjust,

unreasonable and unfair interstate ICS rates and other unjust and unreasonable practices regarding interstate ICS—an interest Congress has explicitly required the Commission to protect. Moreover, the Commission is taking a cautious approach in lowering end-user ICS rates, and is carefully calibrating that approach to ensure that all parties are compensated fairly for their part of the ICS while simultaneously lowering ICS rates for all end users. In short, the rules at issue here are consistent with takings jurisprudence and will not wreak on ICS providers the kind of ''confiscatory'' harm—*i.e.,* ''destroy[ing] the value of [providers'] property for all the purposes for which it was acquired''—that might give rise to a tenable claim under the Fifth Amendment's Takings Clause.

G. Collect Calling Only and Billing-Related Call Blocking

108. In the First Wright Petition, the Petitioners requested that the Commission require ICS providers and prison administrators to offer debit calling, the rates for which Petitioners assert are typically lower than collect calling. In the *2012 ICS NPRM,* the Commission requested comment on various issues related to prepaid calling and debit calling issues, including issues related to the security of debit calling and any increased cost or administrative workload associated with debit and prepaid calling. 78 FR 4369, Jan. 23, 2013. Calling options other than collect calling appear to have increased since the Alternative Wright Petition was filed. The record indicates that some facilities require the ICS provider to offer debit or prepaid calling for inmates, and other facilities or jurisdictions preclude options other than collect calling.

109. The *2012 ICS NPRM* also sought comment on Petitioners' claims that ICS providers block collect calls to numbers served by terminating providers with which they do not have a billing arrangement. 78 FR 4369, Jan. 23, 2013. The *2012 ICS NPRM* noted that in facilities where collect calling is the only calling option available, inmates may be unable to complete any calls. For example, if an inmate tries to call a family member whose phone service provider does not have a billing relationship with the ICS provider, then the ICS provider will prevent the call from going through, and the inmate cannot call his or her family member. The *2012 ICS NPRM* asked if this blocking practice existed and whether there are ways, while other than mandating debit calling, to prevent billing-related call blocking. 78 FR 4369, Jan. 23, 2013. Commenters agreed that billing-related call blocking occurs.

110. *Availability of Debit and Prepaid Calling.* We believe the availability of debit and prepaid calling in correctional facilities will address the problem of call blocking associated with collect calling by enabling service providers to collect payment up front, which eliminates the risk of nonpayment and renders billing-related call blocking unnecessary. We find that debit or prepaid calling yield significant public interest benefits and facilitate communication between inmates and the outside world. For example, the record indicates that debit and prepaid calling can be less expensive than collect calling because they circumvent the concerns of bad debt associated with collect calling and the expense of subsequent collection efforts. We establish lower interim rate caps and safe harbor rate levels for debit and prepaid calling herein. Additionally, the use of prepaid calling helps the called parties to better manage their budget for ICS, thus making inmate contact with loved ones more predictable. We note that the record indicates the increased availability of calling options other than collect calling. In the accompanying Further Notice we seek comment about these options. Additionally, we strongly encourage correctional facilities to consider including debit calling and prepaid calling as options for inmates, so they can more easily and affordably communicate with friends and family.

111. *Call Blocking.* The Commission has a long-standing policy that largely prohibits call blocking. Specifically, the Commission has determined that the refusal to deliver voice telephone calls ''degrade[s] the nation's telecommunications network,'' poses a serious threat to the ''ubiquity and seamlessness'' of the network, and can be an unjust and unreasonable practice under section 201(b) of the Communications Act. Throughout this proceeding ICS providers have offered various justifications for their blocking practices.

112. Some ICS providers claim that they block calls to terminating providers with whom they do not have prior billing relationships to avoid potentially significant uncollectibles. They assert that uncollectible revenue associated with collect calls drives up providers' costs, which are ultimately passed along through ICS rates charged to consumers. Some commenters suggest that encouraging debit or prepaid calling is necessary to eliminate the issue of billing-related call blocking. Other ICS providers note, however, that due to technical advancements and new product developments, they do not block calls due to lack of a billing arrangement, and describe solutions they have implemented to address the problem of billing-related call blocking. For example, Pay Tel offers a ''prepaid collect'' service which allows an inmate to initiate a free call and at its conclusion, Pay Tel offers to set up a direct billing arrangement with the call recipient to pay for any future calls. Securus has implemented a similar strategy by allowing ''a short conversation with the called party, after which the called party is invited to set up a billing arrangement with Securus via oral instructions. CenturyLink has implemented a similar ''prepaid collect'' solution.

113. Based on the availability of these ''prepaid collect'' services, the Commission's long-standing position against unreasonable call blocking, and the public interest benefits realized from encouraging inmates connecting with friends and families, we find billing-related call blocking by interstate ICS providers that do not offer an alternative to collect calling to be an unjust and unreasonable practice under section 201(b). As such, we prohibit ICS providers from engaging in billing-related call blocking of interstate ICS calls unless the providers have made available an alternative means to pay for a call, such as ''prepaid collect,'' that will avoid the need to block for lack of a billing relationship or to avoid the risk of uncollectibles. We also note that the rates for these types of calls are subject to the debit/prepaid interim rate caps or safe harbor rate levels adopted in this Order. We expect this prohibition to have less of an impact on ICS providers serving facilities that make prepaid and debit calling available as an alternative means to pay for a call than it will have on ICS providers serving facilities where collect calling is the only option offered.

114. Absent these requirements, inmates at facilities that impose collect-only restrictions and are served by ICS providers that block calls to providers with whom they do not have a billing relationship would have no way to place calls to friends or family served by providers lacking such a billing relationship. The Commission has the authority to mandate that ICS providers implement solutions to address billing-related call blocking under section 201(b). The ''prepaid collect'' requirement regulates the manner in which ICS providers bill and collect for inmate calls. With regard to common carriers, the Commission and courts have routinely indicated that billing and collection services provided by a

common carrier for its own customers are subject to Title II.

H. Enforcement

115. In this section, we explain the enforcement procedures to ensure compliance with the Act, our rules, and requirement that all ICS interstate rates and charges, including ancillary charges, be cost-based. First, we require that ICS providers file annually with the Commission information on their ICS rates as well as a certification of compliance with the requirements set forth in this Order. Second, we remind ICS providers of the requirement to comply with existing Commission rules. Finally, we remind parties that our enforcement and complaint process may result in monetary forfeiture and/or refunds to ICS end users.

1. ICS Provider Certification Requirement

116. We establish annual certification requirements to facilitate enforcement and as an additional means of ensuring that each and every ICS providers' rates and practices are just, reasonable, and fair and remain in compliance with this Order. First, we require all providers of ICS to file annually by April 1st data regarding their interstate and intrastate ICS rates, with local or other categories of rates broken out separately to the extent they vary, and minutes of use by correctional facility, as well as average duration of calls. Having comprehensive ICS rate information available in a common format will simplify the Commission's task of reviewing these rates and will provide consumers and advocates with an additional resource for understanding them. We require ICS providers to submit annually, by state, their overall percentage of calls disconnected by the provider for reasons other than expiration of time, such as security, versus calls that the inmate or called party disconnected voluntarily. We also require ICS providers to file with the Commission their charges to consumers that are ancillary to providing the telecommunications piece of ICS. These include, for example, charges to open a prepaid account, to add money to a prepaid account, to close a prepaid account, to receive a paper statement, to receive ICS calls on a wireless phone, or any other charges to inmates or other end users associated with use of ICS. These data will assist the Commission in monitoring the effectiveness of the reforms we adopt today and in addressing the issues raised in the attached Further Notice.

117. We further require an officer or director of each ICS provider annually to certify the accuracy of the data and information in the certification, and the provider's compliance with all portions of this Order, including the requirement that ICS providers may not levy or collect an additional charge for any form of TRS call, and the requirement that ancillary charges be cost-based. We find this to be a minimally burdensome way to ensure compliance with this Order. To ensure consistency with other reporting requirements and to minimize burden on ICS providers, we delegate to the Bureau the authority to adopt and implement a template for submitting the required data, information, and certifications.

2. Compliance With Existing Rules

118. We remind ICS providers of their ongoing responsibilities to comply with our existing rules. For example, providers of inmate operator services are required to make certain oral disclosures prior to the completion of the calls. Specifically, section 64.710 of our rules requires providers of inmate operator services to disclose to the consumer the total cost of the call prior to connecting it, including any surcharges or premise-imposed fees that may apply to the call as well as methods by which to make complaints concerning the charges or collection practices. Additionally, ICS providers that are non-dominant interexchange carriers must make their current rates, terms, and conditions available to the public via their company Web sites. Any violation of such responsibilities or failure to comply with existing rules may subject ICS providers to enforcement action, including, among other penalties, the imposition of monetary forfeitures. In the case of carriers, such penalties can include forfeitures of up to $160,000 for each violation or each day of a continuing violation, up to a maximum of $1,575,000 per continuing violation. Where the Commission deems appropriate, such as in particularly egregious cases, a carrier may also face revocation of its section 214 authorization to operate as a carrier. We caution ICS providers that, in order to avoid the potential imposition of these and other penalties, they must comply with all existing rules and requirements.

3. Investigations

119. In this Order, we require ICS providers to charge cost-based rates and charges to inmates and their families, and establish ''safe-harbor'' rates at or below which rates will be presumed just and reasonable. Specifically, we adopt interim safe harbor rates of $0.12 per minute for debit and prepaid interstate calls and $0.14 per minute for collect interstate calls. Based on the evidence in this record, we also set an interim hard cap on ICS providers' rates of $0.21 per minute for interstate debit and prepaid calls, and $0.25 per minute for collect interstate calls. This upper ceiling ensures that the highest rates are reduced without delay. Although we expect the vast majority of providers to be at or below our safe harbor rate levels, we provide this cap to accommodate unique circumstances. ICS providers may elect to charge cost-based rates between the interim safe harbor and the interim cap. We delegate to the Bureau the authority to investigate ICS provider rates and take appropriate actions in such investigations, including the ordering of refunds.

4. Complaints

120. As discussed above, we require all interstate ICS rates and charges to be cost-based, including ancillary charges, per-call or connection charges, and per-minute rates. We note that ICS providers' interstate rates that are at or below the relevant safe harbor rate levels will be treated as lawful until the Commission has issued a decision finding otherwise. Parties can file a complaint challenging the reasonableness of interstate ICS rates and ancillary charges under sections 201 and 276 of the Act, but to the extent that any such complaint challenges rates that are within our safe harbor, the complainant must overcome a rebuttable presumption that such rates are just, reasonable, and fair. Accordingly, those rates may be challenged but any rate prescription rising out of such a proceeding will be forward-looking and will not include refunds.

121. *Formal Complaints.* Complaints against ICS providers under the rules we adopt herein should follow the process set forth in the Commission's formal complaint rules. Compliance with our safe harbor ICS rates will establish a presumption that such rates are just, reasonable, and fair. An ICS provider will bear the burdens of production and persuasion in all complaints challenging whether its ICS rates and/or ancillary charges are just, reasonable, and fair in compliance with sections 201 and 276 of the Act.

122. *Informal Complaints.* Parties may submit informal complaints to the Commission pursuant to section 1.41 of the Commission's rules. Unlike formal complaints, no filing fee is required. We recommend that complaining parties submit any complaints through the Commission's Web site, at *http://*

esupport.fcc.gov/complaints.htm. The Consumer and Governmental Affairs Bureau will also make available resources explaining these rules and facilitating the filing of informal complaints. Although individual informal complaints will not typically result in written Commission orders, the Enforcement Bureau will examine trends or patterns in informal complaints to identify potential targets for investigation and enforcement action.

123. If, after investigation of an informal or formal complaint, it is determined that ICS providers interstate rates and/or charges, including ancillary charges, are unjust, unreasonable or unfair under sections 201 and 276 lower rates will be prescribed and ICS providers may be ordered to pay refunds. In addition to refunds, providers may be found in violation of our rules and face additional forfeitures. We also interpret the language in section 276 that ICS providers be ''fairly compensated'' for each and every completed call to require that an ICS provider be fairly compensated on the basis of either the whole of its ICS business or by groupings that reflect reasonably related cost characteristics, and not on the basis of a single facility it serves. Indeed, we doubt that a party could reasonably claim that the Commission must individually determine the costs of each call. Some averaging of costs must occur, and there is no logical reason that it must occur at the facility level. Finally, we note that this approach is consistent with our traditional means of evaluating providers' costs and revenues for various types of communications services.

I. Mandatory Data Collection

124. To enable the Commission to take further action to reform rates, including developing a permanent cap or safe harbor for interstate rates, as well as to inform our evaluation of other rate reform options in the Further Notice, we require all ICS providers to file data regarding their costs to provide ICS. All such information should be based on the most-recent fiscal year data at the time of Office of Management and Budget approval, may be filed under protective order, and will be treated as confidential. Such information will also ensure that rates, charges and ancillary charges are cost-based.

125. Specifically, we require all ICS providers to provide data to document their costs for interstate, intrastate long distance and intrastate local ICS for the past year. The collection of intrastate data is necessary to allow us to assess what costs are reasonably treated as jurisdictionally interstate. We have identified five basic categories of costs that ICS providers incur: (1) Telecommunications costs and interconnection fees; (2) equipment investment costs; (3) equipment installation and maintenance costs; (4) security costs for monitoring, call blocking; (5) costs of providing ICS that are ancillary to the provision of ICS, including any costs that are passed through to consumers as ancillary charges; and (6) other relevant cost data as outlined in the data template discussed below. For each of the first four categories, we require ICS providers to identify the fixed costs, the per-call costs and the per-minute costs. Furthermore, for each of these categories (fixed, per-call and per-minute costs), we require ICS providers to identify both the direct costs, and the joint and common costs. For the joint and common costs, we require providers to explain how these costs, and rates to recover them, are apportioned among the facilities they serve as well as the services that they provide. For the fifth category, we require ICS providers to provide their costs to establish debit and prepaid accounts for inmates in facilities served by them or those inmates' called parties; to add money to those established debit or prepaid accounts; to close debit or prepaid accounts and refund any outstanding balance; to send paper statements; to send calls to wireless numbers; and of other charges ancillary to the provision of communications service. We also require ICS providers to provide a list of all ancillary charges or fees they charge to ICS consumers and account holders, and the level of each charge or fee. We require all ICS providers to provide data on their interstate and intrastate long distance and local demand (*i.e.,* minutes of use) and to apportion the minutes of use between interstate and intrastate calls. Finally, we will require ICS providers to submit forecasts, supported by evidence, of how they expect costs to change in the future.

126. These data will guide the Commission as it evaluates next steps in the Further Notice. To ensure consistency and to minimize the burden on ICS providers, we delegate to the Bureau the authority to adopt a template for submitting the data and provide instructions to implement the data collection. We also delegate to the Bureau authority to require an ICS provider to submit additional data that the Bureau deems necessary to determine cost-based rate levels for that provider.

IV. Severability

127. All of the rules that are adopted in this Order are designed to work in unison to ensure just, reasonable, and fair interstate ICS rates. However, each of the reforms we undertake in this Order serves a particular function toward this goal. Therefore, it is our intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.

V. Procedural Matters

A. Paperwork Reduction Act Analysis

128. This Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in the proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

129. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA). *See* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

130. The Regulatory Flexibility Act (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the *Report and Order* on small entities.

131. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in WC Docket 12–375. The Commission sought written public comment on the proposals in the NPRM, including

comment on the IRFA. The Commission did not receive comments directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

132. The Report and Order (Order) adopts rules to ensure that interstate inmate calling service (ICS) rates in correctional institutions are just, reasonable, and fair. In the initiating NPRM, the Commission sought information on issues related to the ICS market, ICS rates, and provider costs and ancillary fees. In this Order, the Commission addresses interstate ICS rates, site commission payments, ancillary fees, ICS for deaf and hard-of-hearing inmates, ICS call types, and enforcement and data collection requirements.

133. Evidence in the Commission's record demonstrates that ICS rates today vary widely, and in far too many cases greatly exceed the reasonable costs of providing the service. In the Order, the Commission has found that a significant factor driving these excessive rates is site commission payments: Fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide ICS. The Commission's actions in the Order are required by the Communications Act, which mandates that the Commission ensure that interstate rates are just and reasonable for all Americans. Similarly, Congress made clear in the Act that any compensation under Section 276 should be fair and ''benefit . . . the general public,'' not just some segment of it.

134. In the Order, the Commission sets an interim cap on interstate ICS rates and establishes safe harbor rates. Additionally, the Commission mandates that any site commission payments recovered in end-user rates must be based upon ICS related costs. Similarly, in the Order, the Commission concludes that ancillary charges, such as account set-up fees, fees to receive a paper statement, or fees to refund an outstanding account balance, must also be cost-based. The Further Notice of Proposed Rulemaking (FNPRM) seeks comment on additional ICS issues.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

135. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

136. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

137. *Small Businesses.* Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

138. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

139. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the Commission's action.

140. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Commission's action.

141. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

142. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, 70 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange

service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the Commission's action.

143. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the Commission's action.

144. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the Commission's action.

145. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the Commission's action.

146. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the Commission's action.

147. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the Commission's action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

148. *Monitoring and Certification.* The Order takes steps to reform ICS by requiring providers to charge cost-based rates, adopting interim rate caps for collect calling and prepaid and debit calling, and adopting safe-harbor rates, at or below which ICS rates will be presumed to be just, reasonable, and fair. The Order requires that all ICS providers file annually data on their interstate and intrastate ICS rates and minutes of use. The adopted monitoring requirements will facilitate enforcement and act as an additional means of ensuring that ICS providers' rates and practices are just, reasonable, fair and in compliance with the Order. The Commission also requires ICS providers to submit annually their overall percentage of dropped calls versus completed calls, as well as the number of dropped calls by state. The Commission also requires ICS providers to file their charges to consumers that are ancillary to providing the telecommunications portion of ICS. The Commission further requires each provider to annually certify its compliance with other portions of the Order, including that ICS providers may not levy or collect an additional charge for any form of TRS call and that ancillary service charges be cost-based.

149. *Data Collection.* In order to allow the Commission to establish a permanent cap on interstate rates and to inform the Commission's evaluation of other rate reform options in the Further Notice, the Commission requires all ICS providers to file data regarding their costs to provide ICS. All such information should be based on the most-recent fiscal year at the time of Office of Management and Budget approval, may be filed under protective order, and will be treated as confidential.

150. The Commission has identified five basic categories of costs that ICS providers incur: (1) Telecommunications costs, or interconnection fees; (2) equipment investment costs; (3) equipment installation and maintenance costs; (4) security costs for monitoring, call blocking, (5) costs that are ancillary to the provision of telecommunications service and (6) other relevant cost data as outlined in the Bureau-produced data template discussed below. For each of the first four categories, ICS providers must identify the fixed costs, the per-call costs and the per-minute costs to provide each of these cost categories of ICS. Furthermore, for each of these categories (fixed, per-call and per-minute costs), ICS providers must identify both the direct costs, and the joint and common costs. For the joint and common costs, providers must explain how these costs, and recovery of them, are apportioned among the facilities they serve, as well as the services to which they provide. For the fifth category, we require ICS providers to provide their costs to establish debit and prepaid accounts for inmates in facilities served by them or those inmates' called parties; to add money to those established debit or prepaid accounts; to close debit or prepaid accounts and refund any outstanding balance; to send paper statements; to send calls to wireless numbers and other charges ancillary to the provision of telecommunications service. We also require ICS providers to provide a list of all ancillary charges or fees they charge to ICS consumers and account holders, and the level of each charge or fee. All ICS providers must provide data on their interstate and intrastate demand and to apportion the minutes of use between interstate and intrastate calls. The Commission delegates to the Wireline Competition Bureau (Bureau) the authority to adopt a template for submitting the data.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

151. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

152. The Commission needs access to data that are comprehensive, reliable, sufficiently disaggregated, and reported in a standardized manner. The Order recognizes, however, that reporting obligations impose burdens on the reporting providers. Consequently, the Commission limits its collection to information that is narrowly tailored to meet its needs.

153. *Monitoring and Certification.* The Commission requires ICS providers to submit annually their overall percentage of dropped calls versus completed calls, as well as the number of dropped calls by state. The Commission requires ICS providers to file their charges to consumers that are ancillary to providing the telecommunications piece of ICS. Providers are currently required to post their rates publicly on their Web sites. Thus, this additional filing requirement should entail minimal additional compliance burden, even for the largest ICS providers.

154. The information on providers' Web sites is not certified and is generally not available in a format that will provide the per-call details that the Commission requires to meet its statutory obligations. Thus, the Commission further requires each provider to annually certify its compliance with other portions of the Order, including the requirement that ICS providers may not levy or collect an additional charge for any form of TRS call, and that ancillary service charges are cost-based. The Commission finds that without a uniform, comprehensive dataset with which to evaluate ICS providers' rates, the Commission's analyses will be incomplete. The Commission recognizes that any information imposes burdens, which may be most keenly felt by smaller providers, but concludes that the benefits of having comprehensive data substantially outweigh the burdens. Additionally, some of these potential burdens, such as the filing of rates currently required to be posted on an ICS provider's Web site, are minimally burdensome.

155. *Data Collection.* The Commission requires ICS providers to provide their costs for five basic categories of ICS costs. These data will provide the Commission with sufficient information to establish permanent ICS rate caps. The Commission delegates to the Bureau the authority to adopt a template for submitting the data.

156. The Commission is cognizant of the burdens of data collections, and has therefore taken steps to minimize burdens, including directing the Bureau to adopt a template for filing the data that minimizes burdens on providers by maximizing uniformity and ease of filing, while still allowing the Commission to gather the necessary data. The Commission also finds that without a uniform, comprehensive dataset with which to evaluate ICS providers' costs, its analyses will be incomplete, and its ability to establish rate permanent ICS rate caps in the future will be severely impaired. The Commission thus concludes that requiring ICS providers to report this cost data appropriately balances any burdens of reporting with the Commission's need for the data required to carry out its statutory duties.

6. Report to Congress

157. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

158. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 201, 225, 276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201, 225, 276, 303(r), the Report and Order and FNPRM in WC Docket No. 12–375 *are adopted,* effective 90 days after publication in the **Federal Register**, except those rules and requirements involving Paperwork Reduction Act burdens, as discussed below.

159. *It is further ordered* that Part 64 of the Commission's Rules, 47 CFR Part 64, is *amended* as set forth in Appendix A. These rules shall become effective 90 days after publication in the **Federal Register**, except for § 64.6060 of the Commission's Rules and the Mandatory Data Collection requirement as discussed in Section I of the Order, which *will become effective* immediately upon announcement in the **Federal Register** of OMB approval.

160. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order and FNPRM, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Inmate calling services, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

In consideration of the foregoing, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Add new subpart FF to part 64 to read as follows:

Subpart FF—Inmate Calling Services

Sec.
64.6000 Definitions.
64.6010 Cost-based rates for inmate calling services.
64.6020 Interim safe harbor.
64.6030 Inmate calling services interim rate cap.
64.6040 Rates for Telecommunications Relay Service (TRS) calling.
64.6050 Billing-related call blocking.
64.6060 Annual reporting and certification requirement.

Subpart FF—Inmate Calling Services

§ 64.6000 Definitions.

As used in this subpart:

Ancillary charges mean any charges to Consumers not included in the charges assessed for individual calls and that Consumers may be assessed for the use

of Inmate Calling Services. Ancillary Charges include, but are not limited to, fees to create, maintain, or close an account with a Provider; fees in connection with account balances, including fees to add money to an account; and fees for obtaining refunds of outstanding funds in an account;

Collect calling means a calling arrangement whereby the called party agrees to pay for charges associated with an Inmate Calling Services call originating from an Inmate Telephone;

Consumer means the party paying a Provider of Inmate Calling Services;

Debit calling means a calling arrangement that allows a Consumer to pay for Inmate Calling Services from an existing or established account;

Inmate means a person detained at a correctional institution, regardless of the duration of the detention;

Inmate calling services means the offering of interstate calling capabilities from an Inmate Telephone;

Inmate telephone means a telephone instrument or other device capable of initiating telephone calls set aside by authorities of a correctional institution for use by Inmates;

Prepaid calling means a calling arrangement that allows Consumers to pay in advance for a specified amount of Inmate Calling Services;

Prepaid collect calling means a calling arrangement that allows an Inmate to initiate an Inmate Calling Services call without having a pre-established billing arrangement and also provides a means, within that call, for the called party to establish an arrangement to be billed directly by the Provider of Inmate Calling Services for future calls from the same Inmate;

Provider of Inmate Calling Services, or Provider, means any communications service provider that provides Inmate Calling Services, regardless of the technology used.

§ 64.6010 Cost-based rates for inmate calling services.

All rates charged for Inmate Calling Services and all Ancillary Charges must be based only on costs that are reasonably and directly related to the provision of ICS.

§ 64.6020 Interim safe harbor.

(a) A Provider's rates are presumptively in compliance with § 64.6010 (subject to rebuttal) if:

(1) None of the Provider's rates for Collect Calling exceed $0.14 per minute at any correctional institution, and

(2) None of the Provider's rates for Debit Calling, Prepaid Calling, or Prepaid Collect Calling exceed $0.12 per minute at any correctional institution.

(b) A Provider's rates shall be considered consistent with paragraph (a) of this section if the total charge for a 15-minute call, including any per-call or per-connection charges, does not exceed the appropriate rate in paragraph (a)(1) or (2) of this section for a 15-minute call.

(c) A Provider's rates that are consistent with paragraph (a) of this section will be treated as lawful unless and until the Commission or the Wireline Competition Bureau, acting under delegated authority, issues a decision finding otherwise.

§ 64.6030 Inmate calling services interim rate cap.

No provider shall charge a rate for Collect Calling in excess of $0.25 per minute, or a rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.21 per minute. A Provider's rates shall be considered consistent with this section if the total charge for a 15-minute call, including any per-call or per-connection charges, does not exceed $3.75 for a 15-minute call using Collect Calling, or $3.15 for a 15-minute call using Debit Calling, Prepaid Calling, or Prepaid Collect Calling.

§ 64.6040 Rates for Telecommunications Relay Service (TRS) calling.

No Provider shall levy or collect any charge in addition to or in excess of the rates for Inmate Calling Services or charges for Ancillary Charges for any form of TRS call.

§ 64.6050 Billing-related call blocking.

No Provider shall prohibit or prevent completion of a Collect Calling call or decline to establish or otherwise degrade Collect Calling solely for the reason that it lacks a billing relationship with the called party's communications service provider unless the Provider offers Debit Calling, Prepaid Calling, or Prepaid Collect Calling.

§ 64.6060 Annual reporting and certification requirement.

(a) All Providers must submit a report to the Commission, by April 1st of each year, regarding their interstate and intrastate Inmate Calling Services for the prior calendar year. The report shall contain:

(1) The following information broken out by correctional institution; by jurisdictional nature to the extent that there are differences among interstate, intrastate, and local calls; and by the nature of the billing arrangement to the extent there are differences among Collect Calling, Debit Calling, Prepaid Calling, Prepaid Collect Calling, or any other type of billing arrangement:

(i) Rates for Inmate Calling Services, reporting separately per-minute rates and per-call or per-connection charges;

(ii) Ancillary charges;

(iii) Minutes of use;

(iv) The average duration of calls;

(v) The percentage of calls disconnected by the Provider for reasons other than expiration of time;

(vi) The number of calls disconnected by the Provider for reasons other than expiration of time;

(2) A certification that the Provider was in compliance during the entire prior calendar year with the rates for Telecommunications Relay Service as required by § 64.6040;

(3) A certification that the Provider was in compliance during the entire prior calendar year with the requirement that all rates and charges be cost-based as required by § 64.6010, including Ancillary Charges.

(b) An officer or director from each Provider must certify that the reported information and data are accurate and complete to the best of his or her knowledge, information, and belief.

[FR Doc. 2013–26378 Filed 11–12–13; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 78, No. 219
Wednesday, November 13, 2013

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS–FV–13–0074; FV13–905–3 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate established for the Citrus Administrative Committee (Committee) for the 2013–14 and subsequent fiscal periods from $0.008 to $0.009 per 4/5 bushel carton of Florida citrus handled. The Committee locally administers the Federal marketing order, which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Assessments upon Florida citrus handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 29, 2013.

ADDRESSES: Interested persons are invited to submit written comments on this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

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

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

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This proposed rule would increase the assessment rate established for the Committee for the 2013–14 and subsequent fiscal periods from $0.008 to $0.009 per 4/5 bushel carton of citrus.

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

For the 2012–13 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $0.08 per 4/5 bushel carton of citrus that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 16, 2013, and unanimously recommended 2013–14 expenditures of $190,000 and an assessment rate of $0.009 per 4/5 bushel carton of citrus. In comparison, last year's budgeted expenditures were $223,500. The assessment rate of $0.009 is $0.001 higher than the rate currently in effect. Over the past few years, the Committee's reserve has been depleted as the Committee has used reserve funds to help meet its annual expenditures. Therefore, the Committee recommended increasing the assessment rate to

generate additional funds to increase the Committee's reserve balance.

The major expenditures recommended by the Committee for the 2013–14 year include $92,400 for salaries, $25,000 for Florida Department of Agriculture and Consumer Services (FDACS) manifesting reports and statistics, and $13,000 for a retirement plan. Budgeted expenses for these items in 2012–13 were $116,200, $25,000, and $18,250, respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of Florida citrus, interest income, and the need to add additional funds to the reserve. Florida citrus shipments for the year are estimated at 23.8 million 4/5 bushel cartons, which should provide $214,200 in assessment income. Income derived from handler assessments and interest income would be adequate to cover budgeted expenses. Funds in the reserve (projected at approximately $40,000) would be kept within the maximum permitted by the order of not to exceed one half of one fiscal period's expenses as stated in § 905.42.

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

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

Initial Regulatory Flexibility Analysis

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

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

There are 44 Florida citrus handlers subject to regulation under the marketing order and approximately 8,000 producers of citrus in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than $7,000,000, and small agricultural producers are defined as those having annual receipts less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2011–12 season was approximately $11.79 per 4/5 bushel carton, and total fresh shipments were approximately 29.5 million cartons. Using the average f.o.b. price and shipment data, about 48 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida citrus growers, the average annual grower revenue is below $750,000. Thus, assuming a normal distribution, the majority of handlers of Florida citrus may be classified as large entities and the majority of producers of Florida citrus may be classified as small entities.

This proposal would increase the assessment rate for the 2013–14 and subsequent fiscal periods from the current rate of $0.008 to $0.009 per 4/5 bushel carton of citrus. The Committee unanimously recommended the increased assessment rate, and 2013–14 expenditures of $190,000. The increase was recommended to generate additional funds to add to the Committee's reserve. As previously stated, income derived from handler assessments and interest would be adequate to meet this year's anticipated expenses.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2013–14 season should average around $5.05 per 4/5 bushel carton of citrus. Utilizing this estimate and the proposed assessment rate of $0.009, estimated assessment revenue as a percentage of total grower revenue would be approximately 0.18 percent for the season.

Alternative expenditure and assessment levels were discussed prior to arriving at this budget. However, the Committee agreed on $190,000 in expenditures, reviewed the quantity of assessable citrus and the need to add additional funds to the reserve, and recommended an assessment rate of $0.009 per 4/5 bushel carton of citrus.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. These costs would be offset by the benefits derived from the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 16, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.*

Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2013–14 fiscal period began on August 1, 2013, with shipments beginning in September, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida citrus handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 905

Grapefruit, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.235 is revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 2013, an assessment rate of $0.009 per 4/5 bushel carton or equivalent is established for Florida citrus covered under the order.

Dated: November 5, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–27018 Filed 11–12–13; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1211

[Document Number AMS–FV–11–0074; PR–B]

RIN 0581–AD24

Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on procedures for conducting a referendum to determine whether issuance of a proposed Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order (Order) is favored by domestic manufacturers of hardwood lumber and hardwood plywood. Hardwood lumber and hardwood plywood are used in products like flooring, furniture, moldings, doors, and kitchen cabinets. The procedures would also be used for any subsequent referendum under the Order. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed rule also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

DATES: Comments must be received by January 13, 2014. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by January 13, 2014.

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

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

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

SUPPLEMENTARY INFORMATION: This proposed rule is issued pursuant to the Commodity Promotion, Research and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This action has been designated as ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, OMB has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that it shall not

affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with the U.S. Department of Agriculture (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

This proposed rule invites comments on procedures for conducting a referendum to determine whether manufacturers of hardwood lumber and hardwood plywood favor issuance of a proposed hardwood lumber and plywood Order. Hardwood lumber and hardwood plywood are used in products like flooring, furniture, moldings, doors, and kitchen cabinets. USDA would conduct the referendum. The program would be implemented if it is approved by a majority of the volume of covered hardwood lumber and hardwood plywood represented in the referendum by those who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood lumber. Covered hardwood is defined in this proposed rule and includes hardwood lumber, hardwood lumber products, hardwood value-added lumber products, and hardwood plywood. The procedures would also be used for any subsequent referendum under the Order. The proposed Order is being published separately in this issue of the **Federal Register**. This proposal also announces AMS's intent to request approval by the OMB of new information collection requirements to implement the program.

The 1996 Act authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. As defined under Section 513(1)(D) of the 1996 Act, agricultural commodities include the products of forestry, which includes hardwood lumber.

The 1996 Act provides for alternatives within the terms of a variety of provisions. Paragraph (e) of Section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order.

USDA received a proposal for a national research and promotion program for hardwood lumber from the Blue Ribbon Committee (BRC). The BRC is a committee of 14 industry leaders that manufacture covered hardwood lumber. Hardwood lumber and hardwood plywood are used in products like flooring, furniture, moldings, doors, and kitchen cabinets. The program would be financed by an assessment on hardwood lumber and hardwood plywood manufacturers and would be administered by a board of industry members selected by the Secretary of Agriculture (Secretary). The initial assessment rate would be: (1) $1.00 per $1,000 in sales of hardwood lumber and hardwood lumber products; (2) $.75 per $1,000 in sales of hardwood lumber value added products; and (3) $3.00 per $1,000 in sales of hardwood plywood. These assessments should generate about $10 million annually. The program would exempt those hardwood lumber manufacturers with annual sales of less than $2 million and hardwood plywood manufacturers with annual sales of less than $10 million. Exports from the United States would also be exempt from assessments. The purpose of the program would be to strengthen the position of hardwood lumber and hardwood plywood in the marketplace, maintain and expand markets for hardwood lumber and plywood.

The BRC proposed that a referendum be held among eligible manufacturers to determine whether they favor implementation of the program prior to it going into effect. The BRC recommended that the program would be implemented if it is approved by a majority of the volume of covered hardwood lumber represented in the referendum by those who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood lumber. Hardwood lumber manufacturers with annual sales of $2 million or more and hardwood plywood manufacturers with annual sales of $10 million or more annually would be eligible to vote in the referendum.

Accordingly, this rule would add subpart B to part 1211 that would establish procedures for conducting the referendum. The procedures would cover definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information. The procedures would be applicable for the initial referendum and future referenda.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (manufacturers) as those having annual receipts of no more than $7.0 million.

According to information submitted by the proponents, it is estimated that there are 2,804 hardwood lumber manufacturers and 36 hardwood plywood manufacturers in the United States annually. This number represents separate business entities and includes exempted and assessed entities under the Order; one business entity may include multiple sawmills. It is estimated that 85 to 90 percent of the manufacturers are small businesses.

Regarding the economic impact of the proposed Order on affected entities, hardwood lumber domestic manufacturers and hardwood plywood manufacturers would be required to pay assessments to the Board. As previously mentioned, the initial assessment rate would be: (1) $1.00 per $1,000 in sales of hardwood lumber and hardwood

lumber products; (2) $.75 per $1,000 in sales of hardwood lumber value added products; and (3) $3.00 per $1,000 in sales of hardwood plywood. The percentage of revenue represented by the assessment rate would be 0.01 percent for sales of hardwood lumber and hardwood lumber products, 0.0075 percent for sales of hardwood lumber value added products, and 0.03 percent for sales of hardwood plywood. Thus, the percentage revenue represented by the assessment rate would be well under one percent of sales. Any change in the assessment rate may be changed only upon approval of the Board and only after the Secretary has conducted notice and comment rulemaking.

The Order would provide for an exemption for hardwood lumber, products, value-added products manufacturers for the U.S. market with annual sales less than $2 million of any assessed product combined during a fiscal year. In addition, hardwood plywood manufacturers with annual sales of less than $10 million during a fiscal year are exempt from paying assessments.

Regarding the impact on the industry as a whole, the proposed program is expected to grow markets for hardwood lumber and plywood by increasing the market share in residential, commercial and industrial product areas. While the benefits of the proposed program are difficult to quantify, the benefits are expected to outweigh the program's costs of approximately $10 million per year, which is less than one percent of sales.

Academic researchers have estimated benefit-to-cost ratios for promotion programs across a broad range of commodities in the range of 4:1 to 6:1, indicating that for each dollar of promotion at least 4 to 6 times that amount is generated in new revenues, profit, or ''economic surplus'' to the industry.[1]

This proposed rule invites comments on procedures for conducting a referendum to determine whether hardwood lumber and hardwood plywood manufacturers favor issuance of a proposed hardwood lumber and hardwood plywood Order. Hardwood lumber and hardwood plywood are used in products like flooring, furniture, moldings, doors and kitchen cabinets. USDA would conduct the referendum. The program would be implemented if it is approved by a majority of the volume of covered hardwood lumber represented in the referendum by those who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood lumber. The procedures would also be used for any subsequent referendum under the Order. The procedures are authorized under paragraph (e) of Section 518 the 1996 Act.

Regarding the economic impact of this rule on affected entities, eligible hardwood lumber and hardwood plywood manufacturers would have the opportunity to participate in the referendum. The Order would provide for an exemption for hardwood lumber, products, value-added products manufacturers for the U.S. market with annual sales less than $2 million of any assessed product combined during a fiscal year. In addition, hardwood plywood manufacturers with annual sales of less than $10 million during a fiscal year are exempt from paying assessments. Exempt manufacturers would not be eligible to participate in the referendum. It is estimated that 1,340 hardwood lumber manufacturers and 10 hardwood plywood manufacturers would pay assessments under the Order and thus be eligible to vote in the referendum. Voting in the referendum is optional. If hardwood lumber and hardwood plywood manufacturers chose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

Regarding alternatives, USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost effective and reliable. USDA would provide easy access to information for potential voters through a toll free telephone line.

This action would impose an additional reporting burden on eligible hardwood lumber and hardwood plywood manufacturers. Eligible manufacturers would have the opportunity to complete and submit a ballot to USDA indicating whether or not they favor implementation of the proposed Order. The specific burden for the ballot is detailed later in this document in the section titled Paperwork Reduction Act. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Regarding outreach efforts, USDA would keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA would also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

USDA has performed this initial RFA analysis regarding the impact of this proposed rule on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Program (Referendum Ballot).

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act. The information collection concerns a proposal received by USDA for a national research and promotion program for hardwood lumber and hardwood plywood. The program would be financed by an assessment on hardwood lumber and hardwood plywood manufacturers. The program would exempt those hardwood lumber manufacturers with annual sales of less than $2 million and hardwood plywood manufacturers with annual sales of less than $10 million. Exports from the United States would also be exempt from assessments. A referendum would be held among eligible manufacturers to determine whether they favor implementation of the program prior to it going into effect. The purpose of the program would be to strengthen the position of hardwood lumber and hardwood plywood in the marketplace,

[1] Ward, Ronald, Commodity Checkoff Programs and Generic Advertising Choices, 2nd Quarter 2006, 21(2).

maintain and expand markets for hardwood lumber and plywood.

The information collection requirements in this proposed rule concern the referendum that would be held to determine whether the program is favored by the industry. Hardwood lumber manufacturers with annual sales of $2 million or more and hardwood plywood manufacturers with annual sales of $10 million or more annually would be eligible to vote in the referendum. The ballot would be completed by eligible manufacturers who want to indicate whether or not they support implementation of the program.

Referendum Ballot

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Hardwood lumber and hardwood plywood manufacturers.

Estimated Number of Respondents: 1350 (1340 hardwood lumber manufacturers and 10 hardwood plywood manufacturers).

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 67.50 hours.

The ballot would be added to the other information collections approved under OMB No. 0581–NEW.

An estimated 1350 respondents would provide information to the Board (1340 hardwood lumber manufacturers and 10 hardwood plywood manufacturers). The estimated cost of providing the information to the Board by respondents would be $2,227.50. This total has been estimated by multiplying 67.50 total hours required for reporting and recordkeeping by $38, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly wage were obtained from the U.S. Department of Labor, Bureau of Labor Statistics, publication, ''May 2011 National Occupational Employment and Wage Estimates in the United States'', updated March 29, 2012.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

Request for Public Comment Under the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal manufacturing areas in the United States for hardwood lumber and hardwood plywood lumber; (d) the accuracy of USDA's estimate of the number of hardwood lumber and hardwood plywood manufacturers that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) 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.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the document number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the same addresses referenced in the **ADDRESSES** section of this proposed rule.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection. All written comments received will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Hardwood lumber, Hardwood plywood, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations, as proposed to be amended elsewhere in this issue of the **Federal Register**, be further amended as follows:

PART 1211—HARDWOOD LUMBER AND HARDWOOD PLYWOOD PROMOTION, RESEARCH AND INFORMATION ORDER

■ 1. The authority citation for part 1211 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Subpart B of 7 CFR part 1211 is added to read as follows:

Subpart B—Referendum Procedures

Sec.

1211.100 General.
1211.101 Definitions.
1211.102 Voting.
1211.103 Instructions.
1211.104 Subagents.
1211.105 Ballots.
1211.106 Referendum report.
1211.107 Confidential information.
1211.108 OMB Control number.

Subpart B—Referendum Procedures

§ 1211.100 General.

Referenda to determine whether eligible hardwood lumber and hardwood plywood manufacturers favor the issuance, continuance, amendment, suspension, or termination of the Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order shall be conducted in accordance with this subpart.

§ 1211.101 Definitions.

For the purposes of this subpart:

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* or *USDA* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(c) *Covered hardwood* means hardwood lumber, hardwood lumber products, hardwood value-added lumber products, and hardwood plywood to which an assessment has been or may be levied pursuant to the Order.

(d) *Eligible hardwood lumber and hardwood plywood manufacturer* means any current hardwood lumber manufacturer with annual sales of $2 million or more and current hardwood plywood manufacturers with annual sales of $10 million or more in the United States during the representative period.

(e) *Hardwood lumber* means timber from the wood of a cypress tree or a deciduous, broad-leafed tree (including but not limited to aspen, birch, cypress, poplar, maple, cherry, walnut, and oak) that has been sawn into boards or blocks by a sawmill in the United States.

(f) *Hardwood plywood* means a panel product, the decorative face of which is made from hardwood veneer intended for interior use composed of an assembly of layers or plies of veneer or veneers in combination with lumber core, particleboard, medium density

fiberboard core, hardboard core, or special core or special back material joined with an adhesive.

(g) *Manufacturing* means the process of transforming logs into hardwood lumber, or the process of creating hardwood lumber products, value-added hardwood lumber products, or hardwood plywood.

(h) *Order* means the Hardwood Lumber Promotion, Research and Information Order.

(i) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A spouse who has title to, or leasehold interest in, a hardwood lumber manufacturing entity as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the manufacturing of covered hardwood lumber and the authority to transfer title to the hardwood lumber so manufactured.

(j) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(k) *Representative period* means the period designated by the Department.

(l) *United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1211.102 Voting.

(a) Each eligible manufacturer of covered hardwood lumber shall be entitled to cast only one ballot in the referendum. However, each manufacturer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to manufacture covered hardwood lumber, in which more than one of the parties is a manufacturer, shall be entitled to cast one ballot in the referendum covering only such manufacturer's share of ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate manufacturer, or an administrator, executor or trustee of an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) A single entity who manufactures covered hardwood lumber may cast one vote in the referendum.

(d) All ballots are to be cast by mail or other means, as instructed by the Department.

§ 1211.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, consistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast;

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(c) Give reasonable public notice of the referendum:

(1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible manufacturers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot;

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process;

(f) Prepare a report on the referendum; and

(g) Announce the results to the public.

§ 1211.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1211.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1211.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1211.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1211.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. is OMB control number 0581–NEW.

Dated: November 6, 2013.

Rex A. Barnes,

Associate Administrator.

[FR Doc. 2013–27107 Filed 11–12–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2013–0944]

Proposed Legal Interpretation

AGENCY: Federal Aviation Administration (FAA)

ACTION: Proposed legal interpretation.

SUMMARY: The FAA is proposing to clarify the qualification requirements for the pilot assigned as second in command on a flight in part 121 operations that requires three or more pilots and the pilot who provides relief to the assigned second in command during the en route cruise portion of the flight.

DATES: Comments must be received on or before January 13, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0944 using any of the following methods:

- *Federal eRulemaking 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, 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to 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.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Sara Mikolop, Attorney, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–3073.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration's Office of the Chief Counsel has received multiple requests for a legal interpretation regarding (1) the qualification requirements for both an assigned SIC on a part 121 flight requiring three or more pilots and (2) the qualification requirements for the pilot who relieves the assigned second in command (SIC) during the en route cruise portion of a flight. This proposed legal interpretation addresses the qualification requirements for the assigned SIC and the pilot relieving the assigned SIC. The agency is seeking comments on this proposed legal interpretation because, while the existing interpretations with respect to the requirements of § 121.432(a) are clear, these interpretations may not be consistently applied and the agency is considering whether they are still appropriate.

Part 121 requires a minimum of two pilots for every operation and states that ''the certificate holder shall designate one pilot as pilot in command and the other second in command.'' *See* 14 CFR 121.385(c). However, certain part 121 operations require more than two pilots due to the operating rules that address pilot flight duty and rest, limiting the amount of time a pilot may be aloft or at the controls. *See* 14 CFR part 121, subparts R and S. By assigning one or more additional pilots to a long range flight, a certificate holder can ensure that the assigned pilot in command (PIC) and assigned SIC may each have an opportunity to rest during the flight if needed or if required to comply with the flight duty and rest requirements of part 121.

In those instances in which a part 121 operation requires three or more pilots, § 121.432(a) [1] establishes additional qualification standards for the assigned SIC. Section 121.432(a) requires a pilot who serves as SIC of an operation that requires three or more pilots to meet all PIC qualification requirements except for PIC operating experience. *See* Legal Interpretation 1978–27. The agency explained in the preamble to the provision now codified at § 121.432(a) that this provision is not limited to one particular aspect of PIC qualification. *See* 35 FR 84, 87 (Jan. 3, 1970); Legal Interpretation 1978–27. Rather, it covers broad PIC qualification requirements, inclusive of PIC proficiency checks. *See* 30 FR 6725, 6725 (May 18, 1965) (requiring the second in command in a crew requiring three or more pilots to complete the same semi-annual proficiency checks as the pilot in command); 34 FR 6112, 6113 (April 4, 1969) (proposing 121.432(c), the predecessor to 121.432(a), to remove the repetitious stating of requirements for the second in command of a crew of three or more pilots); 35 FR 84, 87 (Jan. 3, 1970); Legal Interpretation 1978–27 (discussing regulatory history of § 121.432(a) including requirements for PIC proficiency checks in § 121.441).

The assigned SIC is a required flightcrew member and as such may only leave his or her duty station for purposes of rest during the en route cruise portion of the flight, if relief is provided by a pilot who meets the requirements identified in § 121.543(b)(3)(ii) to act as SIC of the aircraft during the en route cruise portion of the flight.[2] *See* 42 FR 37417, 37420 (July 21, 1977). Once a relief pilot assumes the responsibilities of the assigned SIC, the relief pilot becomes a ''required'' flightcrew member within the meaning of § 121.543 and must remain at that duty station until relief is provided in accordance with § 121.543(b)(3)(ii).

To relieve the assigned SIC during the en route portion of a flight (the only time the assigned SIC may leave their duty station), a pilot must meet the part 121 SIC qualification requirements, except for the recency of experience requirement in § 121.439 (three takeoffs and landings within 90 days). *See* § 121.543(b)(3)(ii). In contrast with § 121.432(a), which adds PIC qualification requirements to serve as the assigned SIC in a crew of three or more pilots, the relief pilot requirements in § 121.543(b)(3)(ii) do not identify any additional qualification requirements for service as SIC en route. Accordingly, the pilot relieving the assigned SIC during the en route portion of the flight need not meet the additional SIC qualification requirements identified § 121.432(a).

Finally, the agency notes that § 121.543(b)(3)(ii) does not serve as a substitute for the qualification requirements in § 121.432(a), applicable to the assigned SIC of a part 121 operation that requires three or more pilots. Thus, the exception to the recency requirement in § 121.543(b)(3)(ii) applies only to a pilot who relieves the SIC during the en route cruise portion of the flight.

Issued in Washington, DC, on November 4, 2013.

Mark W. Bury,

Assistant Chief Counsel for International Law, Legislation and Regulations.

[FR Doc. 2013–26919 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–13–P

[1] Section 121.432(a) states, ''Except in the case of operating experience under § 121.434, a pilot who serves as second in command of an operation that requires three or more pilots must be fully qualified to act as pilot in command of that operation.''

[2] Section 121.543(b)(3)(ii) allows a required flightcrew member to leave the assigned duty station if the crewmember is taking a rest and relief is provided, ''In the case of the assigned second in command, by a pilot qualified to act as second in command of that aircraft during en route operations. However, the relief pilot need not meet the recent experience requirements of § 121.439(b).'' The agency notes that the requirements for PIC relief are independent from the requirements for SIC relief. Requirements for PIC relief for purposes of rest during the en route cruise portion of the flight can be found in a separate paragraph, § 121.543(b)(3)(i). An assigned PIC may only be relieved by a pilot who holds an ATP and appropriate type rating. *See* 14 CFR 121.543(b)(3)(i). Further, the PIC relief pilot may be either a fully qualified PIC or an SIC qualified to act as PIC en route. *See* id. An SIC qualified to act as PIC en route means an SIC who has completed all PIC qualification requirements except for the following: 6-month recurrent training required by § 121.433(c)(1)(iii); the operating experience required by § 121.434; the takeoffs and landings required by § 121.439; the line check required by § 121.440; and the 6-month proficiency check or simulator training required by § 121.441(a)(1). *See* id.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 170

RIN 3038–AE09

Membership in a Registered Futures Association

Correction

In proposed rule document 13–26790 beginning on page 67078 in the issue of Friday, November 8, 2013, make the following correction:

On page 67078, in the third column, under **DATES**, in the last line ''January 17, 2014'' should read ''January 7, 2014''.

[FR Doc. C1–2013–26790 Filed 11–12–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. FDA–2013–N–0500]

RIN 0910–AG94

Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is proposing to amend its regulations to revise and clarify procedures for application holders of an approved drug or biological product to change the product labeling to reflect certain types of newly acquired information in advance of FDA's review of the change. The proposed rule would create parity among application holders with respect to such labeling changes by permitting holders of abbreviated new drug applications (ANDAs) to distribute revised product labeling that differs in certain respects, on a temporary basis, from the labeling of its reference listed drug (RLD) upon submission to FDA of a ''changes being effected'' (CBE–0) supplement. The proposed rule describes the process by which information regarding a CBE–0 labeling supplement submitted by a new drug application (NDA) holder, an ANDA holder, or a biologics license application (BLA) holder would be made publicly available during FDA's review of the labeling change and clarifies requirements for all ANDA holders to submit conforming labeling revisions after FDA has taken an action on the NDA or ANDA holder's CBE–0 labeling supplement. The proposed rule also would amend the regulations to allow submission of a CBE–0 labeling supplement for certain changes to the ''Highlights of Prescribing Information'' for drug products with labeling in the ''Physician Labeling Rule'' (PLR) format.

DATES: Submit either electronic or written comments on the proposed rule by January 13, 2014. See section VII for the proposed effective date of a final rule based on this proposed rule. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (the PRA) by December 13, 2013, (see the ''Paperwork Reduction Act of 1995'' section of this document).

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–0500 and/or Regulatory Information Number (RIN) 0910–AG94, by any of the following methods, except that comments on information collection issues under the PRA must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–0500 and RIN 0910–AG94 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Janice L. Weiner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6304, Silver Spring, MD 20993–0002, 301–796–3601.

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Executive Summary

Purpose of the Regulatory Action

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 et seq.) and the Public Health Service Act (the PHS Act) (42 U.S.C. 201 et seq.) provide FDA with authority over the labeling for drugs and biological products, and authorize the Agency to enact regulations to facilitate FDA's review and approval of applications regarding the labeling for those products. FDA is proposing to amend its regulations to revise and clarify procedures for application holders to change the labeling of an approved drug or biological product to reflect certain types of newly acquired information in advance of FDA's review of the change through a CBE–0 supplement. The proposed rule would create parity among application holders with respect to these safety-related labeling changes by permitting ANDA holders to distribute revised generic drug labeling that differs in certain respects, on a temporary basis, from the RLD labeling upon submission to FDA of a CBE–0 supplement.

Summary of the Major Provisions of the Regulatory Action

The proposed rule would enable ANDA holders to update product labeling promptly to reflect certain types of newly acquired information related to drug safety, irrespective of whether the revised labeling differs from that of the RLD. An ANDA holder would be required to send notice of the labeling change proposed in the CBE–0 supplement, including a copy of the information supporting the change, to the NDA holder for the RLD at the same time that the supplement to the ANDA is submitted to FDA, unless approval of the NDA has been withdrawn. This proposal would ensure that the NDA holder for the RLD is promptly advised of the newly acquired information that was considered to warrant the labeling change proposed for the drug in the CBE–0 supplement.

If approval of the NDA for the RLD has been withdrawn (for reasons other than safety or effectiveness), FDA's evaluation of the labeling change proposed by the ANDA holder would consider any submissions related to the proposed labeling change from any other application holder for drug products containing the same active ingredient.

To make the safety-related changes to drug labeling described in a CBE–0 supplement readily available to prescribing health care providers and the public while FDA is reviewing the supplement, FDA proposes to establish a dedicated Web page (or, alternatively, to modify an existing FDA Web page) on which FDA would promptly post information regarding the labeling changes proposed in a CBE–0 supplement.

A supplement to an approved ANDA for a safety-related labeling change that is submitted in a prior approval supplement or in a CBE–0 supplement would be approved upon approval of the same labeling change for the RLD. The proposed rule would establish a 30-day timeframe in which all ANDA holders would be required to submit a CBE–0 supplement with conforming labeling changes after FDA approval of a revision to the labeling for the RLD.

The proposed rule also would amend the regulations to allow submission of a CBE–0 labeling supplement for certain changes to the ''Highlights of Prescribing Information'' for drug products with labeling in the PLR format. This is intended to remove an unnecessary impediment to prompt communication of the most important safety-related labeling changes (e.g., boxed warnings and contraindications) for drug products with labeling in the PLR format.

Finally, FDA regulations provide that FDA may take steps to withdraw approval of an ANDA if the generic drug labeling is no longer consistent with the labeling for the RLD, subject to certain exceptions specified in the regulations. The proposed rule would amend the regulations to add a new exception for generic drug labeling that is temporarily inconsistent with the labeling for the RLD due to safety-related labeling changes submitted by the ANDA holder in a CBE–0 supplement.

Costs and Benefits

The economic benefits to the public health from adoption of the proposed rule are not quantified. By allowing all application holders to update labeling based on newly acquired information that meets the criteria for a CBE–0 supplement, communication of important drug safety information to prescribing health care providers and the public could be improved. The primary estimate of the costs of the proposed rule includes costs to ANDA and NDA holders for submitting and reviewing CBE–0 supplements. The Agency estimates the net annual social costs to be between $4,237 and $25,852. The present discounted value over 20 years would be in the range of $63,040 to $384,616 at a 3 percent discount rate, and in the range of $44,890 to $273,879 at a 7 percent discount rate.

I. Background

A. Drug Labeling

Under the FD&C Act, the PHS Act, and FDA regulations, the Agency makes decisions regarding the approval of marketing applications, including supplemental applications, based on a comprehensive analysis of the product's risks and benefits under the conditions of use prescribed, recommended, or suggested in the labeling (see 21 U.S.C. 355(d); 42 U.S.C. 262).

FDA-approved drug labeling summarizes the essential information needed for the safe and effective use of the drug,[1] and reflects FDA's finding regarding the safety and effectiveness of the drug under the labeled conditions of use. The primary purpose of labeling (commonly referred to as the ''package insert'' or ''prescribing information'') for prescription drugs is to provide health care practitioners with the essential scientific information needed to facilitate prescribing decisions, thereby enhancing the safe and effective use of prescription drug products and reducing the likelihood of medication errors. Prescription drug labeling is directed to health care practitioners, but may include FDA-approved patient labeling (see § 201.57(c)(18) (21 CFR 201.57(c)(18)) and 21 CFR 201.80(f)(2)). The over-the-counter (OTC) *Drug Facts* labeling is directed to consumers and conveys information in a clear, standardized format to enable patient self-selection of an appropriate drug and enhance the safe and effective use of the drug (see 21 CFR 201.66).

All drugs have risks, and health care practitioners and patients must balance the risks and benefits of a drug when making decisions about medical therapy. As a drug is used more widely or under diverse conditions, new information regarding the risks and benefits of a drug may become available. This may include new risks or new information about known risks. Accordingly, all holders of NDAs, ANDAs, and BLAs are required to develop written procedures for the surveillance, receipt, evaluation, and reporting of postmarketing adverse drug experiences to FDA (see §§ 314.80(b), 314.98(a), and 600.80(b) (21 CFR 314.80(b), 314.98(a), and 600.80(b)). Application holders must promptly review all adverse drug experience information obtained or otherwise received by the applicant from any source, foreign or domestic, including information derived from commercial marketing experience, postmarketing clinical investigations, postmarketing epidemiological/surveillance studies, reports in the scientific literature, and unpublished scientific papers, and comply with applicable reporting and recordkeeping requirements (see §§ 314.80(b), 314.98(a), and 600.80(b)). Application holders also must comply with requirements for other postmarketing reports under § 314.81 (21 CFR 314.81) and 21 CFR 600.81 and section 505(k) of the FD&C Act (21 U.S.C. 355(k)). These requirements include submission of an annual report (including a brief summary of significant new information from the previous year that might affect the safety, effectiveness, or labeling of the drug product, and a description of actions the applicant has taken or intends to take as a result of this new information) and, if appropriate, proposed revisions to product labeling (see § 314.81).

When new information becomes available that causes information in labeling to be inaccurate, the

[1] For the purposes of this document, unless otherwise specified, references to ''drugs'' or ''drug products'' include drugs approved under the FD&C Act and biological products licensed under the PHS Act, other than biological products that also meet the definition of a device in section 201(h) of the FD&C Act (21 U.S.C. 321(h)).

application holder must take steps to change the content of its labeling, in accordance with §§ 314.70, 314.97, and 601.12 (21 CFR 314.70, 314.97, and 601.12). All holders of marketing applications for drug products have an ongoing obligation to ensure their labeling is accurate and up-to-date. A drug is misbranded in violation of the FD&C Act when its labeling is false or misleading, or does not provide adequate directions for use and adequate warnings (see 21 U.S.C. 331(a) and (b) and 352(a), (f), and (j)).

B. Current Requirements Related to Changes to Approved Drug Labeling

For most substantive changes to product labeling, an application holder is required to submit a prior approval supplement and receive FDA approval for the change (see §§ 314.70(b) and 601.12(f)(1)). However, in the interest of public health, the regulations permit certain labeling changes based on newly acquired information about an approved drug to be implemented upon receipt by the Agency of a supplemental application that includes the change. These supplements are commonly referred to as ''changes being effected supplements'' or ''CBE–0 supplements'' (see §§ 314.70(c)(6)(iii) and 601.12(f)(2)).

The current regulations provide that application holders may submit CBE–0 supplements for the following types of changes to product labeling:

- To add or strengthen a contraindication, warning, precaution, or adverse reaction for which the evidence of a causal association satisfies the standard for inclusion in the labeling under § 201.57(c);
- To add or strengthen a statement about drug abuse, dependence, psychological effect, or overdosage;
- To add or strengthen an instruction about dosage and administration that is intended to increase the safe use of the drug product;
- To delete false, misleading, or unsupported indications for use or claims for effectiveness; or
- Any labeling change normally requiring a supplement submission and approval prior to distribution of the drug product that FDA specifically requests be submitted under this provision.

The CBE–0 supplement procedures originated from a 1965 policy based on FDA's enforcement discretion regarding certain labeling changes that should be placed into effect ''at the earliest possible time'' (see ''Supplemental New-Drug Applications,'' 30 FR 993, January 30, 1965). Over the years, FDA has clarified the types of labeling changes that may be made by a CBE–0 supplement through a series of rulemakings.

In 1985, FDA updated its procedures for CBE–0 supplements and emphasized that CBE–0 supplements were intended as a narrow exception to the general rule that labeling changes require FDA's prior approval (see ''New Drug and Antibiotic Regulations''; final rule, 50 FR 7452 at 7470, February 22, 1985).

In 2006, FDA amended its regulations governing the content and format of prescription drug labeling to require, among other things, that the labeling of new and recently approved products include introductory prescribing information titled ''Highlights of Prescribing Information'' (see 21 CFR 201.57(a); see also ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products''; final rule, 71 FR 3922, January 24, 2006). The ''Highlights of Prescribing Information'' (Highlights) is intended to summarize the information that is most important for prescribing the drug safely and effectively, and to organize the information into logical groups to enhance accessibility, retention, and access to the more detailed information (see 71 FR 3922 at 3931). As part of this rulemaking, FDA amended the CBE–0 labeling supplement provisions to exclude most changes to the information required in the Highlights, which must be made by a prior approval supplement unless FDA specifically requests that the labeling change be submitted in a CBE–0 supplement or FDA grants a waiver request under § 314.90 (21 CFR 314.90).

In 2008, FDA amended the regulations governing CBE–0 supplements to codify the Agency's view that a CBE–0 labeling supplement is appropriate only to reflect newly acquired information and to clarify that a CBE–0 supplement may be used to add or strengthen a contraindication, warning, precaution, or adverse reaction only if there is sufficient evidence of a causal association with the approved product. FDA explained that these requirements are intended to help ensure that scientifically accurate information appears in the approved labeling for such products (''Supplemental Applications Proposing Labeling Changes for Approved Drugs, Biologics, and Medical Devices''; final rule, 73 FR 49603 at 49604, August 22, 2008).

FDA carefully reviews any labeling change proposed in a CBE–0 supplement, as well as the underlying information or data supporting the change. FDA has the authority to accept, reject, or request modifications to the proposed changes as the Agency deems appropriate, and has the authority to bring an enforcement action if the added information makes the labeling false or misleading (see 21 U.S.C. 352(a)). If the newly acquired information changes the benefit/risk balance for the drug, such that the product no longer meets FDA's standard for approval, then FDA will take appropriate action (see 21 U.S.C. 355(e) and 355–1).

The CBE–0 supplement regulations allow application holders to comply with the requirement to update labeling promptly to include a warning about a clinically significant hazard as soon as there is reasonable evidence of a causal association with a drug (§ 201.57(c)(6)), and other risk information as required by the regulations (§§ 201.57(c) and 201.100(d)(3)).

C. Specific Labeling Requirements Related to Generic Drugs

The FD&C Act describes different routes for obtaining approval of two broad categories of drug applications: An NDA containing full reports of investigations of safety and effectiveness, for which the requirements are set out in section 505(b) and (c) of the FD&C Act, and an ANDA, for which the requirements are set out in section 505(j).

The ANDA category can be further subdivided into an ANDA and a ''petitioned ANDA.'' An ANDA must contain information to show that the proposed drug product is the same as a drug previously approved under section 505(c) of the FD&C Act (the RLD) with respect to active ingredient(s), dosage form, route of administration, strength, labeling, and conditions of use, among other characteristics, and is bioequivalent to the RLD. An applicant that can meet the requirements under section 505(j) of the FD&C Act for approval may rely upon the Agency's finding of safety and effectiveness for the RLD and need not repeat the extensive nonclinical and clinical investigations required for approval of an NDA submitted under section 505(b)(1) of the FD&C Act. A ''petitioned ANDA'' is a type of ANDA for a drug that differs from a previously approved drug product in dosage form, route of administration, strength, or active ingredient (in a product with more than one active ingredient), for which FDA has determined, in response to a suitability petition submitted under section 505(j)(2)(C) of the FD&C Act, that clinical studies are not necessary to demonstrate safety and effectiveness.

A generic drug is classified as therapeutically equivalent to the RLD if it is a pharmaceutical equivalent and has demonstrated bioequivalence (see

''Approved Drug Products With Therapeutic Equivalence Evaluations'' (the Orange Book), 33rd ed., 2013, p. vii). The generic drug program is based on the principle that ''products classified as therapeutically equivalent can be substituted with the full expectation that the substituted product will produce the same clinical effect and safety profile as the prescribed product'' (Orange Book, 33rd ed., 2013, p. vii). Currently, approximately 80 percent of all drugs dispensed are generic drugs (Ref. 1). After the introduction of a generic drug, the market share of the ''brand name'' drug (i.e., the drug approved in an NDA under section 505(c) of the FD&C Act) may drop substantially. Among drugs for which a generic version is available, approximately 94 percent are dispensed as a generic (Ref. 1). For any given brand name drug, there may be multiple approved generic drugs, and the prescribing health care provider ordinarily would not know which generic drug may be substituted for the prescribed product under applicable State law.

A generic drug is required to have the same labeling as the RLD at the time of approval, except for changes required because of differences approved under a suitability petition (see section 505(j)(2)(C) of the FD&C Act and 21 CFR 314.93) or because the drug product and the RLD are produced or distributed by different manufacturers (see section 505(j)(2)(A)(v) of the FD&C Act). FDA has described those differences in § 314.94(a)(8)(iv) (21 CFR 314.94(a)(8)(iv)) as including, for example, differences in formulation, bioavailability, or pharmacokinetics; labeling revisions made to comply with current FDA labeling guidelines or other guidance; or omission of an indication or other aspect of labeling protected by patent or exclusivity. FDA has generally taken the position that a generic drug must maintain the same labeling as the RLD throughout the lifecycle of the generic drug product (see § 314.150(b)(10) (21 CFR 314.150(b)(10)). Thus, if an ANDA holder believes that newly acquired safety information should be added to its product labeling, it should provide adequate supporting information to FDA, and FDA will determine whether the labeling for the generic drug(s) and the RLD should be revised (see 57 FR 17950 at 17961; April 28, 1992).

Although FDA has expressed differing views on this issue over the years, FDA generally has advised that an ANDA holder may use the CBE–0 supplement process only to update its product labeling to conform with approved labeling for the RLD or to respond to FDA's specific request to submit a labeling change under this provision, and may not unilaterally change ANDA labeling in a manner that differs from the RLD (see § 314.150(b)(10); see also 57 FR 17950 at 17961, and ''Supplemental Applications Proposing Labeling Changes for Approved Drugs, Biologics, and Medical Devices''; proposed rule, 73 FR 2848 at 2849; footnote 1; January 16, 2008).

At the time of FDA's adoption of the generic drug regulations in 1992, FDA believed it was important that product labeling for the RLD and any generic drugs be the same to assure physicians and patients that generic drugs were, indeed, equivalent to their RLD. However, as the generic drug industry has matured and captured an increasing share of the market, tension has grown between the requirement that a generic drug have the same labeling as its RLD, which facilitates substitution of a generic drug for the prescribed product, and the need for an ANDA holder to be able to independently update its labeling as part of its independent responsibility to ensure that the labeling is accurate and up-to-date. In the current marketplace, in which approximately 80 percent of drugs dispensed are generic and, as we have learned, brand name drug manufacturers may discontinue marketing after generic drug entry, FDA believes it is time to provide ANDA holders with the means to update product labeling to reflect data obtained through postmarketing surveillance, even though this will result in temporary labeling differences among products. In a study of FDA safety-related drug labeling changes made in 2010, FDA found that the median time from initial approval of the drug product to the time of making the safety-related labeling change was 11 years, which confirms that data supporting labeling changes may become available after approval of generic versions of the drug product (see Ref. 2). FDA found that ''[t]he most critical safety-related label changes, boxed warnings and contraindications, occurred a median 10 and 13 years after drug approval (and the range spanned from 2 to 63 years after approval), underscoring the importance of persistent and vigilant postmarket drug safety surveillance'' (Ref. 2).

D. Recent Court Decisions

In two recent cases, the United States Supreme Court considered the issue of whether Federal law preempts State law tort claims against pharmaceutical manufacturers for failing to provide adequate warnings in drug product labeling (''failure-to-warn claims'') (see *Pliva, Inc.* v. *Mensing,* 131 S.Ct. 2567 (2011) and *Wyeth* v. *Levine,* 555 U.S. 555 (2009)). In *Pliva* v. *Mensing,* the Court held that the difference between NDA and ANDA holders' ability to independently change product labeling through CBE–0 supplements leads to different outcomes on whether Federal labeling requirements preempt State law failure-to-warn claims. In *Wyeth* v. *Levine,* the Court decided that Federal law does not preempt a State law failure-to-warn claim that a brand name drug's labeling did not contain an adequate warning. The Court found that the drug manufacturer could have unilaterally added a stronger warning to product labeling under the CBE–0 regulation as applied to NDAs, and absent clear evidence that FDA would not have approved such a labeling change, it was not impossible for the manufacturer to comply with both Federal and State requirements. The Court reaffirmed that ''through many amendments to the [FD&C Act] and to FDA regulations, it has remained a central premise of federal drug regulation that the manufacturer bears responsibility for the content of its label at all times'' (555 U.S. at 570–571).

Two years later, in *Pliva* v. *Mensing,* the Court decided that Federal law does preempt a State law failure-to-warn claim that a generic drug's labeling did not contain an adequate warning. The Court deferred to FDA's interpretation of its CBE–0 supplement and labeling regulations for ANDAs, and found that Federal law did not permit a generic drug manufacturer to use the CBE–0 supplement process to unilaterally strengthen warnings in its labeling or to issue additional warnings through ''Dear Health Care Professional'' letters, which FDA ''argues . . . qualify as 'labeling' '' (131 S.Ct. at 2576). The Court found that, under the current regulatory scheme, it was impossible for a generic drug manufacturer to comply with its Federal law duty to have the same labeling as the RLD and satisfy its State law duty to provide adequate labeling (131 S.Ct. at 2578). In September 2011, Public Citizen petitioned the Agency to revise its regulations in response to the *Mensing* decision (see Docket No. FDA–2011–P–0675).

As a result of the decisions in *Wyeth* v. *Levine* and *Pliva* v. *Mensing,* an individual can bring a product liability action for failure to warn against an NDA holder, but generally not an ANDA holder, and thus access to the courts is dependent on whether an individual is dispensed a brand name or generic drug. The *Mensing* decision alters the

incentives for generic drug manufacturers to comply with current requirements to conduct robust postmarketing surveillance, evaluation, and reporting, and to ensure that the labeling for their drugs is accurate and up-to-date.

We are proposing to change our regulations to expressly provide that ANDA holders may distribute revised labeling that differs from the RLD upon submission of a CBE–0 supplement to FDA. FDA's proposed revisions to its regulations would create parity between NDA holders and ANDA holders with respect to submission of CBE–0 supplements for safety-related labeling changes based on newly acquired information. This proposal is also intended to ensure that generic drug companies actively participate with FDA in ensuring the timeliness, accuracy, and completeness of drug safety labeling in accordance with current regulatory requirements. If this proposed regulatory change is adopted, it may eliminate the preemption of certain failure-to-warn claims with respect to generic drugs.

II. Description of the Proposed Rule

A. Supplement Submission for Safety-Related Labeling ''Changes Being Effected'' (Proposed §§ 314.70(b)(2), (c)(6), and (c)(8) and 601.12(f)(2))

1. Equal Applicability to NDA Holders and ANDA Holders (Proposed § 314.70(c)(8))

We are proposing to add § 314.70(c)(8) to enable ANDA holders to submit a CBE–0 supplement for generic drug labeling that differs from the labeling of the RLD and to establish that § 314.70(c)(6)(iii) applies equally to the holder of an approved NDA or ANDA. Proposed § 314.70(c)(8) states that an application holder may submit to its approved NDA or ANDA a supplement described by § 314.70(c)(6)(iii).

If an NDA holder or ANDA holder obtains or otherwise receives newly acquired information that should be reflected in product labeling to accomplish any of the objectives specifically described in § 314.70(c)(6)(iii)(A) through (c)(6)(iii)(D), the NDA holder or ANDA holder must submit a CBE–0 supplement (see § 314.70(c)(6)(iii); see also 21 CFR 314.3(b) (defining ''newly acquired information'')). As discussed in section I.A, all application holders, including ANDA holders, are required to conduct surveillance, evaluation, and reporting of postmarketing adverse drug experiences and, if warranted, to propose revisions to product labeling. Proposed § 314.70(c)(8) would expressly permit ANDA holders to update product labeling promptly to reflect newly acquired information that meets the criteria described in § 314.70(c)(6)(iii)(A) through (c)(6)(iii)(D) irrespective of whether the revised labeling differs from that of the RLD. In addition, if an ANDA holder submits a CBE–0 supplement for a labeling change that meets the criteria described in § 314.70(c)(6)(iii)(A) through (c)(6)(iii)(E), the ANDA holder may distribute a ''Dear Health Care Provider'' letter (which also meets the statutory definition of ''labeling'') regarding this labeling change in the same manner as an NDA holder or BLA holder, and be subject to the same statutory prohibition against marketing a misbranded product (see 21 U.S.C. 321(m), 331(a) and (b), and 352, and 21 CFR 201.100(d)(1) and 202.1(*l*)(2)). A ''Dear Health Care Provider'' letter may be used to disseminate the important new drug safety information that warranted the CBE–0 supplement, for example, a significant hazard to health or other important change in product labeling (see 21 CFR 200.5). FDA will continue to undertake any communication plans to health care providers (including distribution of ''Dear Health Care Provider'' letters) that are part of Risk Evaluation and Mitigation Strategies (REMS) that include one or more generic drugs (see 21 U.S.C. 355–1(i)(2)).

The obligation to ensure that labeling is accurate and up-to-date applies equally to all ANDA holders. In certain circumstances, if the RLD approved under section 505(c) of the FD&C Act has been withdrawn from the market, FDA may select a drug product approved in an ANDA (including a petitioned ANDA) to be the ''reference standard'' that an applicant seeking approval of an ANDA that relies upon the withdrawn RLD must use in conducting an in vivo bioequivalence study required for approval (see 57 FR 17950 at 17954). However, the duty to maintain accurate product labeling does not differ between an ANDA designated as the reference standard for bioequivalence studies and other approved ANDAs.

FDA acknowledges that there may be concerns about temporary differences in safety-related labeling for drugs that FDA has determined to be therapeutically equivalent, especially if multiple ANDA holders submit CBE–0 supplements with labeling changes that differ from each other and from the RLD. FDA also recognizes that health care practitioners are unlikely to review product labeling for each of the generic drugs that may be substituted for the prescribed product when making treatment decisions with their patients based on the balance of potential benefits and risks of the drug product for that patient. To address these concerns, FDA proposes to establish a dedicated Web page (or, alternatively, to modify an existing FDA Web page) on which FDA would promptly post information regarding the labeling changes proposed in a CBE–0 supplement while FDA is reviewing the supplement (see proposed §§ 314.70(c)(8) and 601.12(f)(2)(iii)). The public may subscribe to FDA's free email subscription service to receive an email message each time there is an update to this proposed FDA Web page.

The FDA Web page would provide information about pending CBE–0 supplements for safety-related labeling changes, including but not limited to: The active ingredient, the trade name (if any), the application holder, the date on which the supplement was submitted, a description of the proposed labeling change and source of the information supporting the proposed labeling change (e.g., spontaneous adverse event reports, published literature, clinical trial, epidemiologic study), a link to the current labeling for the drug product containing the changes being effected, and the status of the pending CBE–0 supplement (e.g., whether FDA is reviewing the proposed labeling change, has taken an action on the CBE–0 supplement, or has determined that the supplement does not meet the criteria for a CBE–0 supplement). It is expected that a valid safety concern regarding a generic drug product also would generally warrant submission of a supplement for a change to the labeling by the NDA holder for the RLD, as well as other ANDA holders. The CBE–0 supplements would remain posted on FDA's Web page until FDA has completed its review and issued an action letter. If the CBE–0 supplement is approved, the final approved labeling will be made available on the proposed FDA Web page through a link to FDA's online labeling repository at *http://labels.fda.gov.* After an adequate time period to communicate FDA's decision regarding approval of the CBE–0 labeling supplements and to facilitate submission of conforming CBE–0 supplements by other application holders, as appropriate, the original entry on FDA's Web page would be archived. Approved labeling would continue to be available at *http://labels.fda.gov.* As discussed in section II.B, a prior approval supplement or CBE–0 supplement submitted by an ANDA holder will be approved upon

the approval of the same safety-related labeling change for the RLD approved in an NDA under section 505(c) of the FD&C Act, except that if approval of the NDA for the RLD has been withdrawn under § 314.150, FDA may approve an ANDA holder's prior approval supplement or CBE–0 supplement (see section 505(j)(2)(A)(v) of the FD&C Act and proposed § 314.97(b); see also section II.A.1.b and d). Upon FDA approval of revised labeling, other ANDA holders will be required to submit a CBE–0 supplement with conforming revisions. We invite comment on this approach.

Proposed §§ 314.70(c)(8) and 601.12(f)(2)(iii) state that FDA will promptly post on its Web site information regarding labeling changes proposed in a CBE–0 supplement to an NDA, ANDA, or BLA. This proposal is intended to enhance transparency and facilitate access by health care providers and the public to labeling containing newly acquired information about important drug safety issues so that such information may be used to inform treatment decisions. We also invite comment on whether the benefits of a dedicated FDA Web page for CBE–0 supplements could be realized through modification of FDA's existing online labeling repository (*http://labels.fda.gov*). For example, the online labeling repository could be modified to enable a separate listing of pending CBE–0 supplements, thereby improving existing resources and consolidating labeling information on a single FDA Web page.

Current §§ 314.70(c)(6) and 601.12(f)(2) state that the application holder may distribute the drug accompanied by the revised labeling upon submission to FDA of a CBE–0 supplement. However, FDA expects that if an application holder acquires important new safety-related information that warrants submission of a CBE–0 supplement under §§ 314.70(c)(6) or 601.12(f)(2), the application holder will use available means (e.g., distribution of revised labeling in electronic format to the public) to distribute the revised labeling at the time of submission of the CBE–0 supplement to FDA (compare section II.A.1.d). Indeed, the need to promptly communicate certain safety-related labeling changes based on newly acquired information is the basis for this exception to the general requirement for FDA approval of revised labeling prior to distribution (see section I.B). Accordingly, we are proposing to expressly require that applicants submit final printed labeling in structured product labeling (SPL) format at the time of submission of the CBE–0 supplement so that the revised labeling can be made publicly available on FDA's Web site and in other databases (e.g., DailyMed, a Web site provided by the National Library of Medicine that includes drug labeling submitted to FDA) promptly after submission. This proposed change would make the regulations consistent with FDA's previous announcement that ''the Agency will make the revised labeling proposed in a CBE supplement publicly available on its Web site and through the DailyMed shortly after the CBE supplement is received and before FDA has necessarily reviewed or approved it'' (draft guidance for industry on ''Public Availability of Labeling Changes in 'Changes Being Effected' Supplements'' (2006)).[2] We note that the technical means by which the CBE–0 supplements are made publicly available through the FDA Web site may change with evolving technology and Agency practices.

Proposed §§ 314.70(c)(8) and 601.12(f)(2)(iii) would require the applicant to verify that the correct information regarding the labeling changes proposed in its CBE–0 supplement appears on FDA's Web page. If the information is incorrect, then the applicant must contact FDA within 5 business days of posting on the FDA Web page. The applicant may determine that information regarding the labeling changes proposed in its CBE–0 supplement has been posted on the FDA Web page by monitoring the FDA Web page after submission of a CBE–0 supplement or subscribing to FDA's Web page to receive an email notification. FDA intends to identify the FDA contact person(s) who should receive any corrections to such information for NDAs, ANDAs, and BLAs on the proposed FDA Web page. We invite comment on whether this is a sufficient amount of time for an applicant to check the accuracy and completeness of the posted information regarding the CBE–0 supplement and the link to current labeling.

a. *Contents of supplement.* We are proposing to add § 314.70(c)(8)(i) to clarify FDA's expectations regarding the contents of a CBE–0 supplement submitted under § 314.70(c)(6)(iii), and to facilitate publication of information regarding the CBE–0 supplement on FDA's Web page. Current § 314.70(c)(4) requires that a CBE supplement include information listed in § 314.70(b)(3)(i) through (b)(3)(vii), which describes information that must be included in a CBE supplement for a manufacturing change. To clarify FDA's expectations for the contents of a CBE–0 labeling supplement and to facilitate listing information on FDA's proposed Web page, we are proposing to require that a CBE–0 supplement submitted under § 314.70(c)(6)(iii) contain the following information:

i. *The application number(s) of the drug product(s) involved.* If a CBE–0 supplement is being submitted by an NDA or ANDA holder to multiple applications for a drug product or product class, the application holder should identify the application number of each application to which the CBE–0 supplement is being submitted.

ii. *A description of the labeling change proposed in the CBE–0 supplement.* The applicant should submit a proposed narrative description of the proposed labeling change in the CBE–0 supplement for posting on the FDA Web page. This brief narrative description should include the affected section(s) of labeling, the labeling change, and the source of the data (e.g., spontaneous adverse event reports, published literature, clinical trial, epidemiologic study). For example, ''Revised contraindication: Drug X is contraindicated in patients with diabetes. Source: Published literature, epidemiologic study.''

iii. *The basis for the labeling change proposed in the CBE–0 supplement.* The basis for the labeling change proposed in the CBE–0 supplement should include available data supporting the change (e.g., spontaneous adverse event reports, published literature, clinical trial, epidemiologic study). If the supplement has been submitted in response to FDA's specific request to submit a CBE–0 supplement for the labeling change (see § 314.70(c)(6)(iii)(E)), the applicant should describe the specific change requested by FDA and reference the FDA communication containing the request.

iv. *A copy of the product labeling proposed in the CBE–0 supplement.* A copy of the final printed labeling containing the changes being effected should be provided in SPL format for posting on FDA's Web site and distribution to DailyMed. The application holder also should submit a copy of the current product labeling annotated with the labeling change proposed in the CBE–0 supplement (e.g., use of underscoring and/or strikethrough text to show the changes being effected in the product labeling

[2] When final, this guidance will represent FDA's current thinking on this topic. For the most recent version of a guidance, check the FDA Drugs guidance Web page at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

proposed in the CBE–0 supplement as compared to the approved labeling).

v. *Confirmation that notice has been sent to the NDA holder for the RLD.* If the changes being effected supplement is submitted by an ANDA holder and approval of the NDA for the RLD has not been withdrawn under § 314.150, the ANDA holder must include in its submission a statement confirming that the notice described in proposed § 314.70(c)(8)(ii) has been sent to the NDA holder for the RLD.

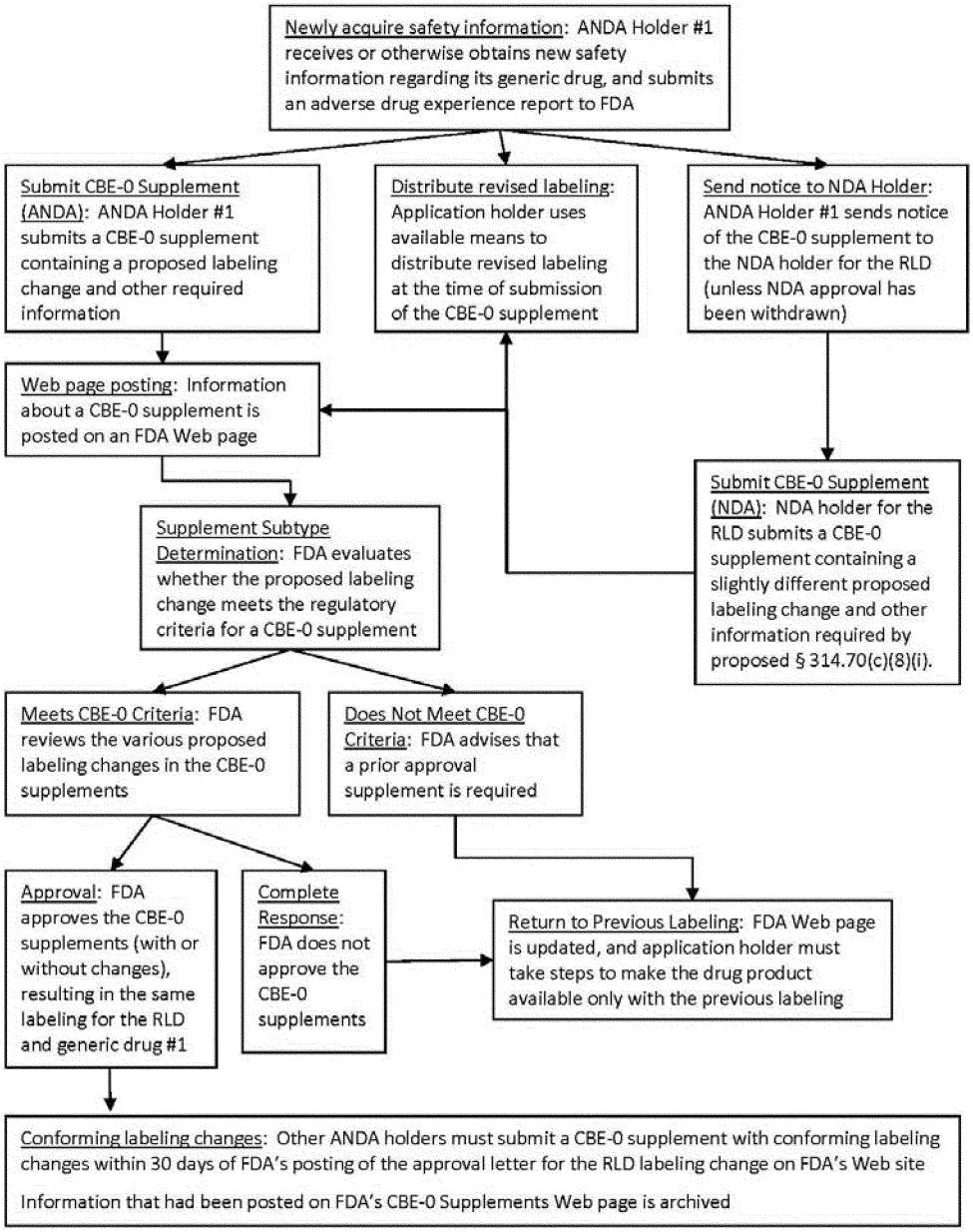
b. *Notice of labeling changes being effected.* We are proposing to add § 314.70(c)(8)(ii) to require an ANDA holder to send notice of the labeling change proposed in the CBE–0 supplement, including a copy of the information supporting the change (with any personally identifiable information redacted), to the NDA holder for the RLD at the same time that the supplement to the ANDA is submitted to FDA, unless approval of the NDA has been withdrawn under § 314.150. This proposal would ensure that the NDA holder for the RLD is promptly advised of the newly acquired information that was considered to warrant the labeling change proposed for the drug in the CBE–0 supplement.

The ANDA holder would be required to send a copy of the information (e.g., published literature, spontaneous adverse event reports) supporting the labeling change described in the CBE–0 supplement to the NDA holder for the RLD so that the NDA holder may consider this information as part of its review and evaluation of postmarketing data under § 314.80(b). If the information supporting the ANDA holder's labeling change described in the CBE–0 supplement contains personally identifiable information (e.g., spontaneous adverse event reports), the ANDA holder should redact that information prior to sending a copy of the information to the NDA holder for the RLD, in accordance with 21 CFR 20.63(f). The NDA holder has full access to the data upon which the RLD was approved and, in most cases, has substantial knowledge about the postmarketing experience for the drug product. FDA's analysis of whether the labeling change proposed by an ANDA holder in a CBE–0 supplement should be approved (and required for inclusion in the labeling of all versions of the drug) would benefit from the views of the NDA holder for the listed drug that was the basis for ANDA submission. Other holders of NDAs or ANDAs for drug products containing the same active ingredient may learn of pending CBE–0 supplements by subscribing to FDA's proposed Web page, and also may submit CBE–0 supplements or provide comments to FDA regarding a pending CBE–0 supplement. This approach to considering information from other application holders is intended to mitigate concerns that a single ANDA holder may not possess sufficient data to perform an adequate assessment of the potential new safety concern raised by the newly acquired information.

It should be emphasized that interpretation of postmarketing safety data is complex, involving analysis of postapproval clinical data, detailed review of adverse drug experience reports in the context of relevant clinical studies, estimates of drug usage and adverse drug experience reporting rates, estimates of background rates of the adverse event, and other relevant information. FDA recognizes that decisions about how to address a safety concern often are a matter of judgment, about which reasonable persons with relevant expertise may disagree, and this may be reflected in different approaches to proposed labeling changes based on newly acquired safety information (see Guidance on ''Drug Safety Information—FDA's Communication to the Public'' (2007)). Figure 1 illustrates one of the possible scenarios involving submission of CBE–0 supplements by multiple application holders.

BILLING CODE 4160–01–P

Figure 1. Example of Process for Submission of CBE-0 Supplements by ANDA Holder and NDA Holder



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Proposed § 314.70(c)(8)(ii) would provide that an NDA holder or any ANDA holder may submit (on its own initiative or in response to a request from FDA) a labeling supplement or correspondence to its NDA or ANDA, as applicable, regarding the labeling changes proposed in a CBE–0 supplement. It is expected that a valid safety concern regarding a generic drug product also would generally warrant a change to the labeling through a CBE–0 supplement by the NDA holder for the RLD and, as a consequence, other generic drug products that reference the RLD. In the event that the NDA holder for the RLD does not submit a supplement seeking approval for a related or conforming labeling change, FDA may send a supplement request letter to the NDA holder or, if appropriate, notify the responsible person of new safety information under section 505(o)(4) of the FD&C Act (see 21 U.S.C. 355(o)(2)(A) defining ''responsible person''). In situations in which the safety information prompting the submission of the CBE–0 supplement would require a label change for other drugs containing the same active ingredient, even if approved under a different NDA, FDA also may send a supplement request letter to the persons responsible for those other drugs.

We recognize that the authority to order safety labeling changes under section 505(o)(4) of the FD&C Act for new safety information about a risk of a serious adverse drug experience will not apply to all potential safety-related labeling changes (see 21 U.S.C. 355–1(b) defining ''new safety information'' and ''serious adverse drug experience''). Based on our experience, we expect that NDA holders will implement safety-related labeling changes requested by FDA even if not required under section 505(o)(4) of the FD&C Act. In circumstances in which section 505(o)(4) of the FD&C Act does not apply, if the NDA holder declined to submit a supplement to make the

change that FDA has concluded is appropriate, FDA would consider whether the NDA holder's failure to update its labeling would warrant the initiation of proceedings to withdraw approval of the NDA (see section 505(e) of the FD&C Act).

It should be noted that if an NDA holder has discontinued marketing a drug product, but approval of the NDA has not been withdrawn under § 314.150, the NDA holder still must comply with applicable statutory and regulatory requirements. These requirements include, for example, postmarketing reporting of adverse drug experiences, submission of an annual report (including a brief summary of significant new information from the previous year that might affect the safety, effectiveness, or labeling of the drug product, and a description of actions the applicant has taken or intends to take as a result of this new information) and, if appropriate, proposed revisions to product labeling. If approval of the NDA for the RLD is withdrawn under § 314.150 for reasons other than safety or effectiveness, any generic versions that remain on the market will be expected to contain the same essential labeling.

c. *Distribution of revised labeling.* We are proposing to add § 314.70(c)(8)(iii) and revise § 601.12(f)(2)(ii) to expressly describe our longstanding practice with respect to labeling supplements that have been submitted as CBE–0 supplements, but that do not meet the regulatory criteria for CBE–0 supplements, and thus do not fall within this narrow exception to the general requirement for FDA approval of revised labeling prior to distribution. Proposed §§ 314.70(c)(8)(iii) and 601.12(f)(2)(ii) explain that if FDA determines during its review period that the supplement does not meet the criteria described in § 314.70(c)(6)(iii) or § 601.12(f)(2)(i), as applicable, the supplement will be converted to a prior approval supplement, and the manufacturer must cease distribution of the drug product(s) accompanied by the revised labeling. In this scenario, the manufacturer must take steps to make the drug product available only with the previous version of the label. This may include, for example, replacing the CBE–0 labeling with the previous labeling on the manufacturer's Web site, requesting replacement of the CBE–0 labeling with the previous labeling on *http://labels.fda.gov,* and attaching the previous package insert to the drug product as soon as feasible thereafter or at the time of next printing of the product labeling for packaging.

This approach is consistent with our clarifying revision in proposed § 314.70(c)(7), which explains that if the Agency does not approve the supplemental application, the manufacturer must cease distribution of the drug product(s) accompanied by the revised labeling. The current text of § 314.70(c)(7) describes the implications of a complete response letter to the applicant for a CBE supplement for manufacturing changes, and does not expressly address CBE–0 labeling supplements. For consistency with § 314.110 (21 CFR 314.110), we are proposing to replace the word ''disapproves'' in § 314.70(c)(7) with the phrase ''issues a complete response letter'' and to make other editorial changes for clarity.

d. *Conforming labeling requirements.* Proposed § 314.70(c)(8)(iv) would establish a 30-day timeframe in which ANDA holders are required to submit a CBE–0 supplement under § 314.70(c)(6)(iii)(E) with conforming labeling after FDA approval of a revision to the labeling for the RLD. Currently, FDA advises ANDA holders to revise product labeling to conform to the labeling of the RLD ''at the very earliest time possible'' (see guidance for industry on ''Revising ANDA Labeling Following Revision of the RLD Labeling'' (2000)). In light of the range of timeframes in which ANDA holders currently submit such labeling supplements, we are proposing to revise these regulations to clarify FDA's expectations regarding the timeframe for submission of conforming labeling changes.

Proposed § 314.70(c)(8)(iv) states that upon FDA approval of changes to the labeling of the RLD, or if approval of the NDA for the RLD has been withdrawn under § 314.150, upon FDA approval of changes to the labeling of an ANDA that relied on the RLD, any other ANDA holder that relied upon the RLD must submit a CBE–0 supplement with conforming labeling revisions within 30 days of FDA's posting of the approval letter for the labeling change on FDA's Web site, unless FDA requires the ANDA holder's labeling revisions at a different time in accordance with sections 505(o)(4) or 505–1 of the FD&C Act, or other applicable authority. The ANDA holder would be expected to submit updated labeling for posting on *http://labels.fda.gov* and DailyMed at the time of submission of the CBE–0 supplement. However, we recognize that distribution of drug products accompanied by an updated package insert may take additional time, depending on how often the drug is packaged, the size of manufacturer inventories, and other factors. Accordingly, proposed § 314.70(c)(8)(iv) is directed to prompt distribution of revised labeling in electronic format, and timely distribution of drug product accompanied by an updated package insert as soon as feasible thereafter or at the time of next printing of the product labeling for packaging.

FDA may require an ANDA holder to submit revised product labeling at a different time for safety labeling changes required under section 505(o)(4) of the FD&C Act or for REMS under section 505–1 of the FD&C Act. This may occur, for example, in the context of approval of modifications to a single, shared system REMS that are made to conform to safety labeling changes (see section 505–1(i)(1)(B) of the FD&C Act).

2. Changes to Highlights of Prescribing Information (Proposed §§ 314.70(c)(6) and 601.12(f)(1) and (f)(2))

We are proposing to revise §§ 314.70(c)(6) and 601.12(f)(1) and (f)(2) to remove the limitation on submission of CBE–0 supplements for changes to the Highlights of drug labeling in the PLR format.

Current §§ 314.70(c)(6) and 601.12(f)(1) and (f)(2) exclude most changes to the information required in the Highlights, which are classified as a ''major change'' that must be made by a prior approval supplement, unless FDA specifically requests that the labeling change be submitted in a CBE–0 supplement or FDA grants a waiver request under § 314.90. This exception reflected the Agency's earlier view that FDA review and approval of most proposed changes to the information in the Highlights of labeling was necessary because of the difficulty involved in summarizing the complex information presented in the full prescribing information (see ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products,'' 71 FR 3922 at 3932, January 24, 2006).

Based on our experience implementing the PLR, we have found this restriction on CBE–0 supplements to be unnecessary in practice. In response to an applicant's inquiry about submission of a CBE–0 supplement for a change that would affect the Highlights of drug labeling, FDA typically waives this limitation under § 314.90 or specifically requests that the applicant proceed with a CBE–0 supplement under § 314.70(c)(6)(iii)(E) or § 601.12(f)(2)(i)(E).

The Highlights of drug labeling is intended to summarize the information that is most important for prescribing the drug safely and effectively. The

types of newly acquired information that would otherwise meet the criteria for submission of a CBE–0 supplement include the critical safety information that is presented in the Highlights. Accordingly, we believe that limiting the availability of CBE–0 supplements for changes to the Highlights of drug labeling in the PLR format may pose an unnecessary impediment to prompt communication of the most important safety-related labeling changes (e.g., boxed warnings and contraindications). Compare 50 FR 7452 at 7470, February 22, 1985 (stating that substantive changes in labeling are appropriately approved by FDA in advance, ''unless they relate to important safety information, like a new contraindication or warning, that should be immediately conveyed to the user'').

Our proposal to remove the limitation on submission of CBE–0 supplements for changes to the Highlights also would create parity between application holders for drugs with labeling in the older format and application holders for drugs with PLR labeling. For example, this proposal would eliminate differences in the ability of application holders to submit CBE–0 supplements for a new or substantively revised contraindication based solely on whether current labeling appeared in the older format or PLR format.

We also are proposing to make conforming revisions to § 314.70(b)(2)(v)(C) to clarify that a prior approval supplement is required for any changes to the Highlights of drug labeling other than changes under § 314.70(c)(6)(iii), except for the specified changes that may be reported in an annual report.

3. Clarifying Revisions and Editorial Changes

We are proposing to revise the title to § 314.70(c) to refer to CBE–0 supplements to clarify the scope of paragraph (c). As revised, § 314.70(c) would describe changes requiring supplement submission at least 30 days prior to distribution of the drug product made using the change (CBE–30 supplements) and certain changes being effected pending supplement approval (CBE–0 supplements). We also are proposing to add titles to paragraphs (c)(1) through (c)(7) of § 314.70 for clarity.

We are proposing to revise § 314.70(c)(1) to clarify that submission of a CBE–0 supplement is required for any change in the labeling to reflect newly acquired information of the type described in § 314.70(c)(6)(iii). The current text of § 314.70(c)(1) is directed only to submission of supplements for certain manufacturing changes and does not fully describe the range of supplements for moderate changes that are described by this paragraph.

We are proposing to move the statement regarding the contents of a CBE supplement for certain manufacturing changes from existing § 314.70(c)(4) to § 314.70(c)(3) without changes.

We are proposing to revise § 314.70(c)(6)(iii) to clarify that an NDA holder or ANDA holder may distribute the drug product with revised labeling upon ''submission'' to FDA of the CBE–0 supplement for the labeling change, rather than upon FDA's ''receipt'' of the change. For ANDAs, section 744B(a)(5) of the FD&C Act (21 U.S.C. 379j–42(a)(5)) clarifies the time when a supplement is ''submitted'' to FDA, whereas the term ''received'' has a specific meaning that generally refers to FDA's determination that a submitted application has met certain criteria for completeness (see 21 CFR 314.101). This proposed revision is intended to avoid potential confusion, and more clearly establish the date on which distribution of revised labeling may occur.

B. Approval of Supplements to an Approved ANDA for a Labeling Change (Proposed § 314.97(b))

We are proposing to revise § 314.97 by designating the current text as paragraph (a) and by adding proposed paragraph (b) to clarify the process for approval of a supplement to an approved ANDA for a labeling change. Proposed § 314.97(b) explains that a supplement to an approved ANDA for a safety-related labeling change that is submitted in a prior approval supplement under § 314.70(b) or in a CBE–0 supplement under § 314.70(c)(6) will be approved upon approval of the same labeling change for the RLD, except that if approval of the NDA for the RLD has been withdrawn under § 314.150, FDA may approve an ANDA holder's prior approval supplement or CBE–0 supplement.

It has been FDA's longstanding position that an ANDA holder may submit a prior approval supplement to request a change to product labeling, and ''FDA will determine whether the labeling for the generic and [reference] listed drugs should be revised'' (57 FR 17950 at 17961, April 28, 1992; see also 57 FR 17950 at 17965 (describing requirement for ''ANDA applicants to submit a periodic report of adverse drug experiences even if the ANDA applicant has not received any adverse drug experience reports *or initiated any labeling changes''*) (emphasis added)). Proposed § 314.97(b) would expressly state that a prior approval supplement to an ANDA for a safety-related change in product labeling will be approved upon approval of the same labeling for the RLD. This approach ensures that the approved labeling for a generic drug continues to be the same as the approved labeling of its RLD (see section 505(j)(2)(A)(v) of the FD&C Act). If approval of the NDA for the RLD has been withdrawn under § 314.150, FDA may approve an ANDA holder's prior approval supplement for a safety-related labeling change (see § 314.105; see also proposed § 314.70(c)(8)(iv)).

Similarly, FDA would approve a CBE–0 labeling supplement to an ANDA upon the approval of the same labeling change for the RLD (see section 505(j)(2)(A)(v) of the FD&C Act), except that if approval of the NDA for the RLD has been withdrawn under § 314.150, FDA may approve an ANDA holder's CBE–0 supplement (see § 314.105; see also proposed § 314.70(c)(8)(iv)). As explained in section I.B, FDA may accept, reject, or request modifications to the labeling changes proposed in the CBE–0 supplement. FDA's evaluation of the labeling change proposed by the ANDA holder would consider any submissions related to the proposed labeling change from the NDA holder for the RLD and from any other NDA or ANDA holders for drug products containing the same active ingredient. The Agency intends to act expeditiously, taking into account the reliability of the data, the magnitude and seriousness of the risk, and number of CBE–0 supplements, and reach a decision on the approvability of labeling proposed by ANDA and NDA holders regarding the safety issue at the same time. After approval of a labeling change, other ANDA holders would be required to submit any necessary conforming labeling changes in accordance with proposed § 314.70(c)(8)(iv).

C. Exception for ANDA Labeling Differences Resulting From ''Changes Being Effected'' Supplement (Proposed § 314.150(b)(10)(iii))

We are proposing to revise § 314.150(b)(10) to provide an additional exception regarding circumstances in which FDA may seek to withdraw approval of an ANDA based on generic drug labeling that is no longer consistent with the labeling for the RLD. Proposed § 314.150(b)(10)(iii) would include, as a permissible difference, changes to generic drug labeling under a CBE–0 supplement, with the understanding that such differences generally will be temporary.

This proposed exception reflects the Agency's judgment that concerns related to temporary differences in labeling between generic drugs and their RLDs are outweighed by the benefit to the public health that would result from all application holders having the ability to independently update drug product labeling to reflect newly acquired information regarding important drug safety issues through CBE–0 labeling supplements (compare section 505(j)(10) of the FD&C Act).

III. Legal Authority

FDA's legal authority to modify §§ 314.70, 314.97, 314.150, and 601.12 arises from the same authority under which FDA initially issued these regulations. The FD&C Act (21 U.S.C. 301 et seq.) and the PHS Act (42 U.S.C. 201 et seq.) provide FDA with authority over the labeling for drugs and biological products, and authorize the Agency to enact regulations to facilitate FDA's review and approval of applications regarding the labeling for those products. Section 502 of the FD&C Act (21 U.S.C. 352) provides that a drug or biological product will be considered misbranded if, among other things, the labeling for the product is false or misleading in any particular (21 U.S.C. 352(a); see also 42 U.S.C. 262(j)). Under section 502(f) of the FD&C Act, a product is misbranded unless its labeling bears adequate directions for use, including adequate warnings against, among other things, unsafe dosage or methods or duration of administration or application. Moreover, under section 502(j) of the FD&C Act, a product is misbranded if it is dangerous to health when used in the manner prescribed, recommended, or suggested in its labeling.

In addition to the misbranding provisions, the premarket approval provisions of the FD&C Act authorize FDA to require that product labeling provide adequate information to permit safe and effective use of the product. Under section 505(c) of the FD&C Act (21 U.S.C. 355), FDA will approve an NDA only if the drug is shown to be both safe and effective for its intended use under the conditions set forth in the drug's labeling. Under section 505(j) of the FD&C Act, FDA will approve an ANDA only if the drug is, with limited exceptions, the same as a drug previously approved under section 505(c) of the FD&C Act with respect to active ingredient(s), dosage form, route of administration, strength, labeling, and conditions of use, among other characteristics, and is bioequivalent to the RLD.

Section 351 of the PHS Act (42 U.S.C. 262) provides additional legal authority for the Agency to regulate the labeling of biological products. Licenses for biological products are to be issued only upon a showing that the biological product is safe, pure, and potent (42 U.S.C. 262(a)). Section 351(b) of the PHS Act prohibits any person from falsely labeling any package or container of a biological product. FDA's regulations in 21 CFR part 201 apply to all prescription drug products, including biological products.

In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the FD&C Act. FDA's regulations relating to CBE–0 supplements are supported by this provision. In 1965, FDA determined that, in the interest of drug safety, manufacturers should make certain safety-related changes to their product labeling at the earliest possible time (see 30 FR 993, January 30, 1965). Thus, for nearly 50 years, FDA, as the Agency entrusted with administration and enforcement of the FD&C Act and the protection and promotion of the public health, has required NDA holders, and subsequently BLA holders, to update drug product labeling with important, newly acquired safety information through submission of a CBE–0 supplement.

FDA's authority to extend the CBE–0 supplement process for safety-related labeling changes to ANDA holders arises from the same authority under which our regulations relating to NDA holders and BLA holders were issued. Nothing in the Hatch-Waxman Amendments or subsequent amendments to the FD&C Act limits the Agency's authority to revise the CBE–0 supplement regulations to apply to ANDA holders to help ensure that generic drugs remain safe and effective under the conditions of use prescribed, recommended, or suggested in the labeling throughout the life cycle of the generic drug product.

In *Pliva* v. *Mensing,* the Supreme Court recognized that ''Congress and the FDA retain the authority to change the law and regulations if they so desire'' (131 S. Ct. 2567, 2582). Recently, in *Mutual Pharmaceutical Co., Inc.* v. *Bartlett,* 133 S. Ct. 2466 (2013), the Court indicated that ''Congress' decision to regulate the manufacture and sale of generic drugs in a way that reduces their cost to patients but leaves generic drug manufacturers incapable of modifying either the drugs' compositions or their warnings'' contributed to the outcome in that case (preemption of the tort claim against the generic manufacturer). We do not read this language to suggest that the Agency would not have authority to extend the CBE–0 supplement process to ANDA holders. The changes proposed in this rulemaking are authorized under the FD&C Act, which provides authority for FDA to permit NDA holders and BLA holders to change their product labeling to include certain newly acquired safety-related information through submission of a CBE–0 supplement.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L.104–4). 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, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule would not be an economically significant regulatory action as defined by Executive Order 12866.

If a rule has a significant economic impact on a substantial number of small businesses, the Regulatory Flexibility Act requires Agencies to analyze regulatory alternatives that would minimize any significant impact of a rule on small entities. FDA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2012) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

The public health benefits from adoption of the proposed rule are not quantified. By allowing all application holders to update labeling based on newly acquired information that meets

the criteria for a CBE–0 supplement, communication of important drug safety information to prescribing health care providers and the public could be improved. The proposed rule may reduce the time in which ANDA holders make safety-related labeling changes for generic drugs for which approval of the NDA for the RLD has been withdrawn. In addition, the proposed rule generally would reduce the time in which all ANDA holders make safety-related labeling changes, by requiring such ANDA holders to submit conforming labeling changes within 30 days of FDA's posting of the approval letter for the RLD's labeling change on its Web site. The primary estimate of the costs of the proposed rule includes costs to ANDA and NDA holders for submitting and reviewing CBE–0 supplements. We assume that the proposed rule will have no effect on the number of CBE–0 supplements submitted by BLA holders.

The proposed rule is expected to generate little cost. The Agency estimates the net annual social costs to be between $4,237 and $25,852. The present discounted value over 20 years would be in the range of $63,040 to $384,616 at a 3 percent discount rate, and in the range of $44,890 to $273,879 at a 7 percent discount rate.

FDA has examined the economic implications of the final rule as required by the Regulatory Flexibility Act. This proposed rule would only impose new burdens on small generic drug manufacturers who submit CBE–0 supplements for safety-related labeling changes. Given the small cost per submission and the uncertainty in the estimated number of CBE–0 labeling supplements for safety-related labeling changes that may be submitted by an ANDA holder, we do not expect this proposed rule to impose a significant impact on a substantial number of small entities. We therefore propose to certify that that this proposed rule would not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

This proposed rule contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501–3520). A description of these provisions is given in this document with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products

Description: The proposed rule would permit ANDA holders to submit a CBE–0 supplement for certain types of labeling changes based on newly acquired information. At the time of submission, the ANDA holder would be required to send notice of the labeling change proposed in the CBE–0 supplement, including a copy of the information supporting the change, to the NDA holder for the RLD, unless the NDA for the RLD has been withdrawn.

Description of Respondents: Respondents to this collection of information are NDA holders, ANDA holders, and BLA holders.

Burden Estimates: FDA regulations at §§ 314.70 and 314.97 set forth the requirements for submitting supplements to FDA for certain changes to an approved NDA or ANDA. These regulations specify the submission of supplements at different times, depending on the change to the approved application. Under § 314.70(c)(6), an applicant may commence distribution of a drug product upon receipt by FDA of a supplement for a change to the applicant's approved application (a CBE–0 supplement). The changes for which a CBE–0 supplement may be submitted include, among other things, changes in the labeling (§ 314.70(c)(6)(iii)) to reflect newly acquired information, for example, to add or strengthen a contraindication, warning, precaution, or adverse reaction for which there is reasonable evidence of a causal association.

FDA currently has OMB approval (OMB control number 0910–0001) for the submission of supplements to FDA for changes to an approved NDA or ANDA under §§ 314.70 (including § 314.70(c)(6)(iii)) and 314.97.

Under the proposed rule, ANDA holders would be permitted to submit a supplement to FDA for certain types of labeling changes based on newly acquired information. This collection of information is not currently approved under OMB control number 0910–0001. Under proposed § 314.70(c)(8), if an NDA holder or ANDA holder obtains or otherwise receives newly acquired information that should be reflected in product labeling to accomplish any of the objectives specifically described in § 314.70(c)(6)(iii), the NDA holder or ANDA holder should submit a CBE–0 supplement to FDA. Proposed § 314.70(c)(8) is intended to permit ANDA holders to update product labeling promptly, without FDA's special permission and assistance, to reflect newly acquired information that meets the criteria described in § 314.70(c)(6)(iii) irrespective of whether the revised labeling differs from that of the RLD.

To minimize confusion and make safety-related changes to generic drug labeling readily available to prescribing health care providers and the public while FDA is reviewing a CBE–0 supplement, FDA would establish, under proposed § 314.70(c)(8), a dedicated Web page (or, alternatively, a modification of an existing FDA Web page) on which FDA would promptly post information regarding the labeling changes proposed in a CBE–0 supplement. ANDA holders would be required to verify that the correct information regarding the labeling changes proposed in their CBE–0 supplement appears on the FDA Web page. If the information is incorrect, the ANDA holder must contact the appropriate FDA review division within 2 business days of posting on the FDA Web page.

At the time of submission of the CBE–0 labeling supplement to FDA, proposed § 314.70(c)(8)(ii) would require the ANDA holder to send notice of the labeling change proposed in the supplement, including a copy of the information supporting the change, to the NDA holder for the RLD, unless the NDA for the RLD has been withdrawn.

Based on the data summarized in section IV (Analysis of Impacts), we estimate that a total of approximately 15 ANDA holders (''number of respondents'' in table 1) would submit to us annually a total of approximately 20 CBE–0 labeling supplements under proposed § 314.70(c)(8), if this rule is finalized (''total annual responses'' in table 1). We also estimate that preparing and submitting each CBE–0 labeling supplement under proposed § 314.70(c)(8) will take approximately 12 hours per ANDA holder (''hours per response'' in table 1). This burden hour estimate includes the time needed by an

ANDA holder to verify, as required under proposed § 314.70(c)(8), that the correct information regarding the labeling change proposed in its CBE–0 supplement appears on the FDA Web page, and the time needed to contact FDA if the information is incorrect.

In addition, we estimate that a total of approximately 15 ANDA holders would send notice of the labeling change proposed in each of the 20 CBE–0 labeling supplements, including a copy of the information supporting the change, to the NDA holder for the RLD, as required under proposed § 314.70(c)(8)(ii). We also estimate that preparing and sending each notice would take approximately 3 hours per ANDA holder.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
CBE–0 supplement submission by ANDA holders (314.70(c)(8))	15	1.34	20	12	240
ANDA holder notice to NDA holder (314.70(c)(8)(ii))	15	1.34	20	3	60
Total					300

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7245, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the title, ''Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products.''

In compliance with the PRA (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register**.

VI. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) and 25.31(a) and (g) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Effective Date

FDA proposes that any final rule based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

We intend to apply this rule, if finalized, to any submission received by FDA on or after the effective date. This proposed rule provides sufficient notice to all interested parties, including NDA holders, ANDA holders, and BLA holders, to adjust their submissions and actions by the time we issue any final rule. However, we invite comments on how a final rule should be implemented.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Request for Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

X. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov*. (FDA has verified the Web site address in this reference section, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. IMS Institute for Healthcare Informatics, ''The Use of Medicines in the United States: Review of 2011,'' April 2012 (available at *http://www.imshealth.com/ims/Global/Content/Insights/IMS%20Institute%20for%20Healthcare%20Informatics/IHII_Medicines_in_U.S_Report_2011.pdf*).

2. Lester J., G. A. Neyarapally, E. Lipowski, et al., ''Evaluation of FDA Safety-Related Drug Label Changes in 2010,'' *Pharmacoepidemiology Drug Safety,* vol. 22, pp. 302–305, 2013.

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend 21 CFR parts 314 and 601 as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 371, 374, 379e.

§ 314.70 [Amended]

■ 2. Amend § 314.70 as follows:

■ a. Revise paragraph (b)(2)(v)(C) introductory text;

■ b. Revise the paragraph (c) heading;

■ c. Add headings to paragraphs (c)(1) through (c)(7);

■ d. Revise paragraphs (c)(1), (c)(3), (c)(4), (c)(6) introductory text, (c)(6)(iii) introductory text, and (c)(7); and

■ e. Add new paragraph (c)(8).

§ 314.70 Supplements and other changes to an approved application.

* * * * *

(b) * * *

(2) * * *

(v) * * *

(C) Any change to the information required by § 201.57(a) of this chapter other than changes under paragraph (c)(6)(iii) of this section, with the following exceptions that may be reported in an annual report under paragraph (d)(2)(x) of this section:

* * * * *

(c) *Changes requiring supplement submission at least 30 days prior to distribution of the drug product made using the change and certain changes being effected pending supplement approval (moderate changes).*

(1) *Types of changes for which a supplement is required.* A supplement must be submitted for any change in the drug substance, drug product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the drug product as these factors may relate to the safety or effectiveness of the drug product. A supplement also must be submitted for any change in the labeling to reflect newly acquired information of the type described in paragraph (c)(6)(iii) of this section. If the supplement provides for a labeling change under paragraph (c)(6)(iii) of this section, 12 copies of the final printed labeling must be included.

(2) *Changes requiring supplement submission at least 30 days prior to distribution of the drug product made using the change (changes being effected in 30 days).* * * *

* * * * *

(3) *Explanation of basis for the change and supplement identifier.* A supplement submitted under paragraph (c)(1) of this section is required to give a full explanation of the basis for the change and identify the date on which the change is to be made. The supplement must be labeled ''Supplement—Changes Being Effected in 30 Days'' or, if applicable under paragraph (c)(6) of this section, ''Supplement—Changes Being Effected.'' The information listed in paragraphs (b)(3)(i) through (b)(3)(vii) of this section must be contained in the supplement.

(4) *Distribution of drug product pending supplement approval (for changes being effected in 30 days).* Pending approval of the supplement by FDA, except as provided in paragraph (c)(6) of this section, distribution of the drug product made using the change may begin not less than 30 days after receipt of the supplement by FDA.

(5) *Limitations on distribution of drug product pending supplement approval (for changes being effected in 30 days).* * * *

* * * * *

(6) *Changes requiring supplement submission prior to distribution of the drug product made using the change (changes being effected).* The agency may designate a category of changes for the purpose of providing that, in the case of a change in such category, the holder of an approved application may commence distribution of the drug product involved upon submission to the agency of a supplement for the change. These changes include, but are not limited to:

(i) * * *

(ii) * * *

(iii) Changes in the labeling to reflect newly acquired information to accomplish any of the following:

* * * * *

(7) *Effect of complete response letter for changes being effected supplement.* If the agency issues a complete response letter to the supplemental application, the manufacturer may be ordered to cease distribution of the drug product(s) made with the manufacturing change or, if the supplemental application was submitted for a labeling change under paragraph (c)(6) of this section, the manufacturer must cease distribution of the drug product(s) accompanied by the revised labeling.

(8) *Equal applicability to application holders and abbreviated application holders.* An application holder may submit to its approved application or abbreviated application a supplement described by paragraph (c)(6)(iii) of this section. FDA will promptly post on its Web site information regarding the labeling changes proposed in the changes being effected supplement. The applicant must verify that the correct information regarding the labeling changes proposed in the changes being effected supplement appears on FDA's Web site and must contact FDA within 5 business days of posting if the information is incorrect.

(i) *Contents of supplement.* A supplement to an approved application or abbreviated application described by paragraph (c)(6)(iii) of this section must contain the following information:

(A) The application number(s) of the drug product(s) involved;

(B) A description of the labeling change proposed in the changes being effected supplement;

(C) The basis for the labeling change proposed in the changes being effected supplement, including the data supporting the change or, if submitted under paragraph (c)(6)(iii)(E), the specific change requested by FDA;

(D) A copy of the final printed labeling and current product labeling annotated with the labeling change proposed in the changes being effected supplement;

(E) If the changes being effected supplement is submitted by an abbreviated application holder and approval of the application for the reference listed drug has not been withdrawn under § 314.150 of this chapter, a statement confirming that the notice described in paragraph (c)(8)(ii) of this section has been sent to the application holder for the reference listed drug.

(ii) *Notice of labeling changes being effected.* An abbreviated application holder must send notice of the labeling change proposed in the changes being effected supplement, including a copy of the information supporting the change (with any personally identifiable information redacted), to the application holder for the reference listed drug at the same time that the supplement to the abbreviated application is submitted to FDA, unless approval of the application has been withdrawn under § 314.150 of this chapter. An application holder or any abbreviated application holder may submit (on its own initiative or in response to a request from FDA) a labeling supplement or correspondence to its application or abbreviated application, as applicable, regarding the proposed labeling changes.

(iii) *Distribution of revised labeling.* Pending approval of the supplement by FDA, distribution of the drug product with the revised labeling may be made by an application holder or abbreviated application holder upon submission to FDA of the supplement, except that if FDA determines during its review period that the supplement does not meet the criteria described in paragraph (c)(6)(iii) of this section, the supplement will be converted to a prior approval supplement, and the manufacturer must cease distribution of the drug product(s) accompanied by the revised labeling.

(iv) *Conforming labeling requirements.* Upon FDA approval of changes to the labeling of the reference listed drug or, if the application for the reference listed drug has been withdrawn, upon FDA approval of changes to the labeling of an abbreviated application that relied on the reference listed drug, any other abbreviated application holder that relied upon the reference listed drug must submit a supplement under paragraph (c)(6)(iii)(E) of this section with conforming labeling revisions within 30 days of FDA's posting of the approval letter on its Web site, unless FDA requires the abbreviated application holder's labeling revisions at a different time in accordance with sections 505(o)(4) or 505–1 of the Federal Food, Drug, and Cosmetic Act.

* * * * *

§ 314.97 [Amended]

■ 3. Revise § 314.97 to read as follows:

§ 314.97 Supplements and other changes to an approved abbreviated application.

(a) The applicant must comply with the requirements of §§ 314.70 and 314.71 regarding the submission of supplemental applications and other changes to an approved abbreviated application.

(b) A supplement to an approved abbreviated application for a safety-related change in the labeling that is submitted under § 314.70(b) or (c)(6) will be approved upon approval of the same labeling change for the reference listed drug, except that if approval of the application for the reference listed drug has been withdrawn under § 314.150, FDA may approve such a supplement to an approved abbreviated application.

§ 314.150 [Amended]

■ 4. Amend § 314.150 as follows:

■ a. In paragraph (b)(10)(i), remove the word ''or'';

■ b. In paragraph (b)(10)(ii), remove the period and replace with a semicolon followed by the word ''or''; and

■ c. Add paragraph (b)(10)(iii).

§ 314.150 Withdrawal of approval of an application or abbreviated application.

* * * * *

(b) * * *

(10) * * *

(iii) Changes to the labeling for the drug product that is the subject of the abbreviated application under § 314.70(c)(6)(iii) of this chapter.

* * * * *

PART 601—LICENSING

■ 5. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

■ 6. Amend § 601.12 by revising paragraphs (f)(1), (f)(2)(i) introductory paragraph, and (f)(2)(ii); and by adding new paragraph (f)(2)(iii) to read as follows:

§ 601.12 Changes to an approved application.

* * * * *

(f) * * * (1) *Labeling changes requiring supplement submission—FDA approval must be obtained before distribution of the product with the labeling change.* Except as described in paragraphs (f)(2) and (f)(3) of this section, an applicant shall submit a supplement describing a proposed change in the package insert, package label, container label, or, if applicable, a Medication Guide required under part 208 of this chapter, and include the information necessary to support the proposed change. The supplement shall clearly highlight the proposed change in the labeling. An applicant may report the minor changes to the information specified in paragraph (f)(3)(i)(D) of this section in an annual report. The applicant shall obtain approval from FDA prior to distribution of the product with the labeling change.

(2) *Labeling changes requiring supplement submission—product with a labeling change that may be distributed before FDA approval.* (i) An applicant shall submit, at the time such change is made, a supplement for any change in the package insert, package label, or container label to reflect newly acquired information to accomplish any of the following:

* * * * *

(ii) Pending approval of the supplement by FDA, the applicant may distribute a product with a package insert, package label, or container label bearing such change at the time the supplement is submitted, except that if FDA determines during its review period that the supplement does not meet the criteria described in paragraph (f)(2)(i) of this section, the supplement will be converted to a prior approval supplement, and the manufacturer must cease distribution of the drug product(s) accompanied by the revised labeling. The supplement shall clearly identify the change being made and include necessary supporting data. The supplement and its mailing cover shall be plainly marked: ''Special Labeling Supplement—Changes Being Effected.''

(iii) FDA will promptly post on its Web site information regarding the labeling changes proposed in the changes being effected supplement. The applicant must verify that the correct information regarding the labeling changes proposed in the changes being effected supplement appears on FDA's Web site and must contact FDA within 5 business days of posting if the information is incorrect.

* * * * *

Dated: November 5, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–26799 Filed 11–8–13; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0319]

RIN 1625–AA09

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Treasure Island, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Treasure Island Causeway Bridge, mile 119.0, Treasure Island, Florida. The Treasure Island Bridge is a double-leaf bascule bridge that provides a vertical clearance of 21 feet in the closed position. The Treasure Island Bridge crosses the Gulf Intracoastal Waterway at mile 119.0, Treasure Island, Pinellas County, Florida. Changing the schedule from on signal to three times an hour during the week and twice an hour on the weekends and Federal holidays between the hours of 7 a.m. and 7 p.m. will reduce vehicle traffic issues caused by the bridge openings. Between 7 p.m. and 7 a.m. the bridge will continue to open only on signal.

DATES: Comments and related material must reach the Coast Guard on or before February 11, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0319 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email, Mr. Michael Lieberum, Chief Operations Section, Seventh Coast Guard District Bridge Branch at 305–415–6744, email michael.b.lieberum@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG–2013–0319), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–0319] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0319) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

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

A. Basis and Purpose

The City of Treasure Island has requested a change to the Treasure Island Causeway Bridge regulation due to an increase in vehicle traffic in this area. Based on the bridge logs this bridge opens on average less than twice an hour on signal. Scheduled openings at regular intervals between 7 a.m. and 7 p.m. would reduce the vehicle traffic back-ups caused by the opening of the bridge. Motorists will be able to better judge when the bridge will be open, and this will lead to less vehicle congestion on the surface streets surrounding the bridge.

B. Discussion of Proposed Rule

The current operating regulation governing the Treasure Island Causeway Bridge 33 CFR 117.5 requires the bridge to open on signal. The proposed schedule would have the bridge open at regular intervals between the hours of 7 a.m. and 7 p.m. The intervals will occur three times an hour during the week and twice an hour on the weekends. The Coast Guard does not anticipate longer bridge opening periods due to an accumulation of vessels, since the bridge currently opens less than twice an hour on average.

C. Regulatory Analyses

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

1. Regulatory Planning and Review

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

This action will have a minor impact on vessels transiting the Gulf Intracoastal Waterway in the vicinity of Treasure Island, Florida and will still meet the reasonable needs of navigation. This action is designed to improve vehicle traffic flow in downtown Treasure Island.

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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the bridge daily from 7 a.m. to 7 p.m. This proposed rule would change the regulations from one signal to three times an hour during the week and twice an hour on weekends and Federal holidays which should not have a substantial impact on any vessel traffic.

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

3. Assistance for Small Entities

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

4. 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.).

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. 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.

9. 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.

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This 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.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32(e), of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. In § 117.287, revise paragraph (g) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(g) The draw of the Treasure Island Causeway bridge, mile 119.0 shall open on signal except that from 7 a.m. to 7 p.m. the draw need open on the hour, 20 minutes after the hour and 40 minutes after the hour Monday through Friday and on the quarter hour and three quarter hour on Saturday, Sunday and Federal holidays.

* * * * *

Dated: October 3, 2013.

J.H. Korn,

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

[FR Doc. 2013–27066 Filed 11–12–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0933]

RIN 1625–AA00

Safety Zone for Fireworks Display, Baltimore Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone encompassing certain waters of Baltimore Harbor. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a barge located in Baltimore's Inner Harbor at Baltimore, MD on December 31, 2013. This safety zone is intended to protect the maritime public in a portion of Baltimore Harbor.

DATES: Comments and related material must be received by the Coast Guard on or before December 13, 2013.

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

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

(2) Fax: 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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

1. Submitting Comments

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

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2013–0933] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2013–0933) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

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

B. Regulatory History and Information

This proposed rule involves a fireworks display associated with a New Year's Eve event that will take place in Baltimore, Maryland on December 31, 2013 and will attract thousands of spectators. The launch sites for the fireworks display are from discharge barges located in Baltimore Harbor. The permanent safety zones listed in the Table to 33 CFR 165.506 also apply to this event. This rulemaking adds the location of an additional barge from which fireworks will be launched.

C. Basis and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this proposed rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks

display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway before, during and after the scheduled event.

D. Discussion of Proposed Rule

The City of Baltimore will conduct a fireworks display launched from barges located in Baltimore Harbor at Baltimore, MD, scheduled on December 31, 2013 at approximately midnight. In the event of inclement weather, the fireworks display will be rescheduled on January 1, 2014 at approximately 7 p.m.

Through this regulation, the Coast Guard proposes to establish a temporary safety zone. The proposed zone will encompass all waters of Baltimore Harbor, Baltimore's Inner Harbor, within a 280 yards radius of a fireworks discharge barge in approximate position latitude 39°16′36.7″ N, longitude 076°35′53.8″ W, located northwest of the Domino Sugar (ASR Group) refinery wharf at Baltimore, MD. The temporary safety zone will be enforced from 11 p.m. on December 31, 2013 through 1 a.m. on January 1, 2014, and if necessary due to inclement weather, from 5:30 p.m. through 8 p.m. on January 1, 2014.

The effect of this temporary safety zone will be to restrict navigation in the regulated area during, as well as the set up and take down of, the fireworks display. Vessels will be allowed to transit the waters of Baltimore Harbor outside the safety zone.

This rulemaking requires that entry into or remaining in this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor in the safety zone at the time the safety zone is implemented do not have to depart the zone. All vessels underway within this safety zone at the time it is implemented are to depart the zone. To seek permission to transit the area of the safety zone, the Captain of the Port Baltimore can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing the safety zone can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Federal, state, and local agencies may assist the Coast Guard in the enforcement of the safety zone. The Coast Guard will issue notices to the maritime community to further publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

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

Although this regulation would restrict access to this area, the effect of this proposed rule will not be significant because: (i) the safety zone will only be in effect from 11 p.m. on December 31, 2013 through 8 p.m. on January 1, 2014, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to certain portions of Baltimore Harbor, vessel traffic will be able to transit safely around the safety zone.

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 proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate or transit through or within, or anchor in, the safety zone during the enforcement period. This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the reasons provided under Regulatory Planning and Review.

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 (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

3. Assistance for Small Entities

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

an expenditure, we do discuss the effects of this rulemaking elsewhere in this preamble.

8. 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.

9. 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.

10. Protection of Children From Environmental Health Risks

We have 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.

11. 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.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have 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 (NEPA) (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. This proposed rule involves establishing a temporary safety zone for a fireworks display. The fireworks are launched from navigable waters of the United States and may have potential for negative impact on the safety or other interest of waterway users and near shore activities in the event area. The activity includes fireworks launched from barges near the shoreline that generally rely on the use of navigable waters as a safety buffer to protect the public from fireworks fallouts and premature detonations. This rulemaking is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0933 to read as follows:

§ 165.T05–0933 Safety Zone for Fireworks Display, Baltimore Harbor; Baltimore, MD.

(a) *Location.* The following area is a safety zone: all waters of Baltimore Harbor, Baltimore's Inner Harbor, within a 280 yards radius of a fireworks discharge barge in approximate position latitude 39°16′36.7″ N, longitude 076°35′53.8″ W, located northwest of the Domino Sugar (ASR Group) refinery wharf at Baltimore, Maryland. All coordinates refer to datum NAD 1983.

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05.0933.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the safety zone is implemented do not have to depart the safety zone. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(c) *Definitions.* As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement period.* This section will be enforced from 11 p.m. on December 31, 2013 through 1 a.m. on January 1, 2014, and if necessary due to inclement weather, from 5:30 p.m. through 8 p.m. on January 1, 2014.

Dated: October 30, 2013.

Kevin C. Kiefer,

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

[FR Doc. 2013–27067 Filed 11–12–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0228; FRL–9902–57–Region 4]

Approval and Promulgation of Implementation Plans; Mississippi; Transportation Conformity SIP—Memorandum of Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan revision submitted by the Mississippi Department of Environment Quality on May 31, 2013. This submission adopts a memorandum of agreement establishing transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. This action streamlines the conformity process to allow direct consultation among agencies at the Federal, state and local levels. This proposed action is being taken pursuant to section 110 of the Clean Air Act.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 13, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2013–0228, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2013–0228,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's telephone number is 404–562–9222. She can also be reached via electronic mail at *sheckler.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: October 24, 2013.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–27020 Filed 11–12–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375; FCC 13–113]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks public comment on options to reform the inmate calling service (ICS) market. Possible new rules could affect all ICS providers, including small entities. In proposing these reforms, the Commission seeks comment on various options discussed and additional options for reforming the ICS market.

DATES: Comments are due on or before December 13, 2013. Reply comments are due on or before December 30, 2013.

ADDRESSES: You may submit comments identified by WC Docket No. 12–375 by any of the following methods:

- *Federal Communications Commission's 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: *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 FURTHER INFORMATION CONTACT: Lynne Engledow, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520 or *lynne.engledow@fcc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to sections 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, May 1, 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

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 Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This is a summary of the Commission's Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 12–375, FCC 13–113, dated on August 9, 2013 and released on September 26, 2013. The full text of this document is available for public inspection during regular business hours in the Commission's Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The full text of this document may be downloaded at the following Internet address: *http://www.fcc.gov/documents/*. The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request alternative formats for persons with disabilities (e.g., accessible format documents, sign language, interpreters, CARTS, etc.), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY). This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

The proceeding this Further Notice of Proposed Rulemaking (FNPRM) initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with sec. 1.1206(b). In proceedings governed by sec. 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

I. Further Notice of Proposed Rulemaking

1. We seek comment on additional measures we could take to ensure that interstate and intrastate ICS are provided consistent with the statute and public interest, the Commission's authority to implement these measures, and the pros and cons of each measure. We believe additional action on ICS will help maintain familial contacts stressed by confinement and will better serve inmates with special needs while still ensuring the critical security needs of correctional facilities of various sizes. Specifically, we seek comment on:

- Reforming intrastate ICS rates and practices;
- ICS for the deaf and hard of hearing community;
- Further reforms of interstate and intrastate ICS rates;
- Cost recovery in connection with the provision of ICS;
- Ensuring that charges ancillary to the provision of ICS are cost-based;
- ICS call blocking;
- Ways to foster competition to reduce rates within correctional facilities; and
- Quality of service for ICS.

A. Reforming Intrastate ICS

2. In this section, we seek comment on reforming intrastate ICS rates and practices to ensure that consumers across the country can benefit from a fair, affordable ICS rate framework that encourages inmates to stay connected with friends and family. As discussed below, we believe that intrastate reform is necessary and that the Commission has the authority to reform intrastate ICS rates. We seek comment on these issues.

1. Need for Intrastate Rate Reform

3. We commend states that have undertaken ICS reform. In particular, we encourage more states to eliminate site commissions, adopt rate caps, disallow or reduce per-call charges, or take other steps to reform ICS rates. The reforms adopted in the Order are structured in a manner to encourage other states to undertake reform and to give states sufficient flexibility to structure reforms in a manner that achieves just and reasonable rates. Even so, it is unlikely that all 50 states, Washington, DC, and the U.S. territories will all engage in ICS reform in the near term. Indeed, several comments encourage the Commission to reform intrastate ICS rates as well as interstate ICS rates. As a result, if the Commission does not take action to

reform unfair intrastate ICS rates, the unreasonably high rates will continue, many families will remain disconnected, and the available societal benefits will not be realized.

4. The Order explains the legal and policy reasons why the Commission needed to adopt reforms of interstate ICS rates. We believe the same legal and policy concerns identified in the Order apply equally with regard to high intrastate rates. For example, lower ICS rates result in increased communications between incarcerated parents and their children. Additionally, the record indicates that the lack of regular contact between incarcerated parents and their children is linked to truancy, homelessness, depression, aggression, and poor classroom performance. Further, studies have demonstrated that increased contact with families during incarceration leads to lower rates of recidivism, and associated lower taxpayer costs. Indeed, the record indicates that a significant number of ICS calls are intrastate, highlighting the need for reform of intrastate rates. We tentatively conclude and seek comment on the conclusion that intrastate ICS rate reform will yield these and other societal benefits in the same manner as interstate ICS rate reform.

5. As discussed in the Order, the variance in interstate ICS rates is significant (from an effective rate of $0.043 per minute in New Mexico to $0.89 per minute with a $3.95 call set up charge in Georgia) and that such variance is unlikely to be based on the ICS providers' costs. In the Order, we conclude that competition and market forces have failed to ensure just, reasonable, and fair interstate ICS rates, and, for the same reasons, we tentatively conclude that the same failure has occurred for intrastate ICS rates as well. We invite comment on this analysis. Where states have failed to ensure just, reasonable, and fair ICS rates for intrastate services, is the Commission compelled to take action to ensure just, reasonable, and fair rates under section 276? Should the Commission only take action to reform intrastate ICS rates in states that have not reformed rates to levels that are at or below our interim safe harbor adopted above? Would doing so permit other states to adopt reforms?

6. For the same reasons we found that site commission payments are not part of the cost of providing interstate ICS, we tentatively conclude that site commissions should not be recoverable through intrastate rates, and seek comment on this tentative conclusion. Where states have prohibited site commission payments, we seek comment on whether the resulting intrastate ICS rates are just and reasonable and whether an average of such rates would provide a reasonable safe harbor for fair intrastate ICS rates.

7. The record also reflects that differing interstate, intrastate long distance and local rates have encouraged the use of technology to reduce the costs on families. In practice, call recipients obtain telephone numbers associated with a geographic area (either local or long distance) that corresponds to the lowest ICS rate for a particular correctional facility. Will the cost-based rates required by the Order create a market-based solution for driving intrastate rates to cost-based levels absent further regulatory actions? Also, does the existence of uniform ICS rates evidence ICS providers' ability to provide intrastate and interstate calls at the same rate level, and therefore support Commission action to ensure such uniformity among interstate and intrastate ICS rates?

2. Legal Authority

8. Several commenters in this proceeding have argued that the Commission has authority to regulate rates for intrastate ICS under section 276 of the Act, which directs the Commission to regulate the rates for intrastate and interstate payphone services and defines such services to include ''the provision of inmate telephone service in correctional institutions, and any ancillary services.'' We agree and tentatively conclude that section 276 affords the Commission broad discretion to regulate intrastate ICS rates and practices that deny fair compensation, and to preempt inconsistent state requirements. We seek comment on this tentative conclusion and related issues below.

9. While the Commission has broad jurisdiction over interstate telecommunications services, its authority over intrastate telecommunications is, except as otherwise provided by Congress, generally limited by section 2(b) of the Act, which states that ''nothing in this Act shall . . . give the Commission jurisdiction with respect to . . . intrastate communication service by wire or radio.'' As the Supreme Court has held, however, section 2(b) has no effect where the Communications Act, by its terms, unambiguously applies to intrastate services. That is the case here. Section 276(b)(1) expressly authorizes—indeed, instructs—the Commission to regulate intrastate payphone services:

> In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after February 8, 1996, the Commission *shall* take all actions necessary (including any reconsideration) to prescribe regulations that . . . establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed *intrastate* and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation . . . .

Furthermore, section 276(c) provides that ''[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.''

10. We also believe that our authority in this regard finds support in judicial precedent. In *Illinois Public Telecommunications Association* v. *FCC,* the D.C. Circuit upheld against jurisdictional challenge the Commission's authority to regulate, and to preempt inconsistent state regulation of, the local coin rate for payphones:

> It is undisputed that local coin calls are among the intrastate calls for which payphone operators must be ''fairly compensated;'' the only question is whether in section 276 the Congress gave the Commission the authority to set local coin call rates in order to achieve that goal. We conclude that it did.

Thus, we tentatively conclude these statutory provisions and associated case law permit the Commission to regulate intrastate ICS provider compensation, including end-user rates. We seek comment on this conclusion.

11. We also seek comment on whether and how the Commission's potential regulation of intrastate ICS pursuant to section 276 might be informed by any relevant provisions within section 276, including, for example, (i) the introductory ''purpose'' clause of section 276(b)(1) (''In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to benefit the general public . . . .''); and (ii) section 276(b)(1)(A)'s requirement that regulations adopted by the Commission ensure that payphone service providers are compensated ''per call'' and for ''each and every completed intrastate and interstate call.''

12. Commenters are asked to identify what, if any, limits apply to Commission authority to regulate intrastate ICS rates under section 276. We note that the Commission's authority to regulate interstate ICS rates derives from both sections 276 and 201. We seek comment on whether this

impacts the Commission's authority to regulate intrastate ICS rates. For instance, section 201(b) authorizes this Commission to ensure that all charges ''for and in connection with'' an interstate common carrier communication service are just and reasonable. Does the absence of similar language in section 276 constrain our authority to regulate intrastate ICS rates in the same manner and to the same extent as interstate ICS rates? Alternatively, by broadly defining payphone service to also include ''any ancillary services,'' does section 276 effectively grant the Commission authority over intrastate rates that is similar in scope to authority under the ''for and in connection with'' provision in section 201(b)?

13. We seek comment on any sources of authority other than section 276 that would authorize the Commission to regulate intrastate ICS rates paid by end users. Does the provision of ICS—either in its current form or as it evolves to include new services and technologies—implicate the ''impossibility'' exception to section 2(b) of the Act, which allows a Commission regulation to preempt a state regulation when it is impossible to separate the interstate and intrastate components? Would application of this exception here give the Commission any additional authority over intrastate ICS rates beyond what is already conferred by the preemption provision in section 276(c) and the ''each and every intrastate . . . call'' provision in section 276(b)(1)(A)?

14. We also ask whether there are other limits on our authority to regulate intrastate ICS rates. For instance, are intrastate ICS rates, as some commenters allege, tightly bound up with issues, such as inmate discipline and prison security, that are traditionally regulated by states, localities, or prison officials and, if so, does that limit the Commission's ability to regulate intrastate ICS rates in ways that would not be applicable for interstate ICS rates? Would Commission regulation of intrastate ICS rates, or any specific elements thereof, ''present[] unsettled constitutional implications under the 10th and 11th Amendments,'' as one commenter contends? The record reflects only limited analysis in favor of these arguments, and we note that the proponents of these arguments have not cited any precedents that would preclude the Commission from exercising broad authority over intrastate ICS rates under section 276. Commenters should provide a complete supporting analysis and justification. We also invite comments on any other issues that may be relevant to assessing the scope of the Commission's authority to regulate intrastate ICS rates.

B. Inmate Calling Services for the Deaf and Hard of Hearing Community

15. We seek comment on four additional issues raised in our record, including: (i) whether and how to discount the per-minute rate for ICS calls placed using TTYs, (ii) whether action is required to ensure that ICS providers do not deny access to TRS by blocking calls to 711 and/or state established TRS access numbers, (iii) the need for ICS providers to receive complaints on TRS service and file reports with the Commission, and (iv) actions the Commission can take to promote the availability and use of VRS and other assistive technologies in correctional facilities.

16. *Rates for TTY Calls.* The record indicates that despite the fact that using TTY equipment is not the preferred form of TRS for many deaf and hard of hearing individuals, the equipment is still in widespread use in correctional facilities. Consistent with the Commission's statement in the *2012 ICS NPRM,* commenters assert that TTY-to-voice calls take at least three to four times longer than voice-to-voice conversations to deliver the same conversational content, not including the time it takes to connect to the operator. Given this difference in communication speed, commenters argue that TTY users should be charged a discounted rate for TTY calls.

17. We tentatively conclude that inmate calling service per-minute rates for TTY calls should be set at 25 percent of the safe harbor rate for inmate calls. The 25 percent figure is consistent with record evidence regarding the length of a conversational call via TTY as compared to regular voice calls. We seek comment on this proposal.

18. The Commission previously has noted that section 276(b)(1)(A) specifically exempts ''telecommunications relay service calls for hearing disabled individuals'' from the Commission-established ''per call compensation plan'' ensuring that ICS providers are ''fairly compensated.'' No party has, to date, responded to the Commission's request for comment on how it should take this exemption into account in examining rates. We also note that section 225(d)(1) of the Act requires the Commission to prescribe regulations that ''require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day and the distance from point of origination to point of termination.'' We seek comment on whether sections 276 and 225 provide sufficient authority for us to adopt a discounted rate for TTY calls.

19. We also seek comment on how ICS providers should recover the costs of providing discounted TTY calls. One proposal would be to ensure that the safe harbor per-minute rate levels are set high enough to ensure that ICS providers recover the full cost of TTY calls. Given the very small number of deaf and hard of hearing inmates relative to the overall prison population, are the safe harbor rates adopted in today's Order sufficient to allow recovery of the discount? What are the total number of TTY minutes of use compared to the total minutes of use charged by ICS providers? If the safe harbor rates adopted today are not sufficient to recover the cost of a TTY discount, by what amount would the rate need to be increased? If the Commission adopts a tiered rate structure as discussed below or reduces the safe harbor rates adopted in the Order, what effect would this have on the ability to recover the discount?

20. We also seek comment on allowing ICS providers to recover the cost of a TTY discount from the Telecommunications Relay Service Fund. What steps would the Commission need to take to allow ICS providers to obtain certification to request payment from the Fund? What types of data would ICS providers need to submit to the Fund administrator when seeking compensation? What other steps would the Commission and the Fund administrator need to take to ensure that ICS providers are fully compensated for discounted TTY calls while protecting the TRS Fund against waste, fraud, and abuse?

21. *Access to 711 and State TRS Numbers.* We seek comment below on ICS call blocking practices generally. We note that commenters allege that many ICS providers block calls to toll-free numbers, including 711, which ''impede[s] deaf inmates' abilities to call a relay service provider from a TTY.'' We seek specific comment on the practice of blocking calls to 711 and other TRS access numbers. Section 225 of the Act states that the Commission ''shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.'' Does section 225 of the Act provide to the Commission an independent source of authority to

prevent such blocking? What actions, if any, should the Commission take to ensure that deaf and hard of hearing inmates are able to access TRS? What methodologies exist to enable deaf inmates to reach relay services utilizing 711 and 800 numbers while blocking access to all other 800 numbers?

22. *TRS Complaints and Reporting.* Commenters urge the Commission to require ICS providers to collect and report to the Commission: (i) data on TRS usage via ICS, and (ii) complaints from individuals that access TRS via ICS. We seek comment on these proposals. If the Commission were to require ICS providers to submit TRS usage data, what data would be appropriate? Would the data that TRS providers submit to the TRS Fund Administrator be an appropriate model? Likewise, were the Commission to require the collection and reporting of user complaints, would the rules applicable to TRS providers serve as an appropriate model? Are the Commission's existing consumer complaint procedures sufficient to accommodate complaints of this type? We seek comment on the benefits and burdens, including on small entities, of imposing these reporting requirements.

23. *Availability of Assistive Technologies in Correctional Facilities.* As discussed above, we decline to mandate the types of TRS access technologies correctional facilities must make available to inmates. We note, however, that some correctional facilities already make VRS or other types of video communication available to inmates, and seek comment on how the Commission can facilitate the availability of VRS and other forms of assistive technologies in correctional facilities. What assistive technologies and devices should ICS providers make available? What are the advantages and disadvantages of each? Would additional assistive technologies supplant or complement TTY technology in the prison context? How can the security concerns of correctional facilities be accommodated, especially where 700/800/900 number calls or IP enabled devices are used?

24. VRS communications require the interaction of three separate yet interlinked components: VRS access technologies, video communication service, and relay service provided by ASL-fluent communications assistants (CAs). We note that in the recently adopted *VRS Structural Reform Order,* the Commission directed the creation of a neutral video communication service provider and a VRS access technology reference platform—key elements of VRS service that will be operated pursuant to contract with the Commission or the TRS Fund Administrator and paid for out of the TRS Fund. We seek comment on whether the availability of the neutral video communication service provider and the VRS access technology reference platform could facilitate the introduction of VRS in correctional facilities. What features or requirements, if any, would correctional facilities require the neutral video communication service provider and the VRS access technology reference platform to offer before allowing their use by inmates? Would it be possible for the administrator(s) of the neutral video communication service provider and the VRS access technology reference platform to implement such requirements or features at a reasonable cost to the TRS Fund? What other factors, such as security issues unique to correctional facilities, may serve as a barrier to the introduction of VRS and other forms of Internet-based TRS in correctional facilities?

C. Further ICS Rate Reform

25. In the Order, we adopted interim safe harbor rate levels and interim rate caps based on a conservative analysis of rate and cost data in the record. In this section, we seek comment on additional reforms including further rate reductions.

1. Rate Structure

26. We seek comment on additional reforms and alternative ways of accomplishing interstate and intrastate rate reforms including the establishment of unified interstate and intrastate rates and various suggestions for a tiered rate structure. First, we note that in the Order we make clear that the rules we adopt apply to inmate telephone service provided to the full range of ''correctional institutions,'' including institutions such as prisons, jails and immigration detention facilities. Beyond the guidance already provided in the order, we seek comment on whether the Commission should provide a definition in the Commission's rules or to provide a more exhaustive list of the kinds of facilities covered. Parties that support the adoption of a definition of ''correctional institution'' should suggest proposed rule language and the reasons to support the inclusion or exclusion of various facilities.

27. *Permanent Safe Harbors and Rate Caps.* We seek comment on the methodology the Commission should use to establish cost-based permanent safe harbors and rate caps to ensure just, reasonable rates and fair compensation to providers. We seek comment on maintaining the interim rate caps and safe harbor rate levels adopted in the Order and expanding that structure to encompass intrastate ICS rates. We note that both the safe harbors and rate caps are set at conservative levels fully supported by the record but are intended to be interim in nature while the Commission further analyzes data received from the mandatory data collection adopted in the Order in order to consider whether any permanent rates should be further refined. Should we maintain the current safe harbors and make them permanent or should they be reduced over time given that they were set at conservative levels? Should they be applied to intrastate rates? Do commenters propose any specific modifications to the interim rate caps and safe harbor rate levels adopted above? For example, we seek comment below on various tiered approaches. Should any permanent safe harbor or cap be based on a tiered approach? Should we adopt a mechanism to adjust any permanent safe harbor or rate cap over time to account for changing ICS provider costs, inflation, or other factors? We invite commenters to identify factors we should consider and to detail the proposed benefits of such modifications.

28. *All-Distance Rates.* Some providers recommend that the Commission adopt a rate structure that charges the same rate regardless of the distance or jurisdictional nature of the call. Under such a structure, ''all calls are charged at the same per-minute rate regardless of distance, call type or jurisdictional classification.'' The Commission has, in other contexts, determined that the cost of calling today is distance insensitive. We seek comment on parties' experience with distance insensitive ICS rates. Do commenters believe such a rate structure would be useful in regulating ICS rates going forward? Why or why not? We note that some facilities already have such rates. Do such rates sufficiently deal with claimed cost differences between prisons and jails of varying sizes? Commenters suggest that after reducing and standardizing all ICS rates call volumes will increase, resulting in increased revenues. Is this suggestion correct? Have other commenters experienced such a change? We seek comment on the various ICS rate structures suggested in the record. In particular, would adoption of the Petitioner's proposed rate of $0.07 per minute bring about the benefits of a distance-insensitive rate claimed by proponents of such an approach?

29. *Tiered Rate Structure.* In the Order we adopted interim safe harbor

rate levels and interim rate caps that are sufficiently conservative to enable providers to recover their costs and account for any potential differing characteristics associated with providing service to varying types and sizes of facilities.

30. In the *2012 ICS NPRM,* the Commission sought comment on the usefulness of a tiered rate structure based on volume of ICS minutes at the facility. 78 FR 4369, Jan. 23, 2013. In response, commenters suggested a tiered rate structure with rate levels that vary according to a facilities' monthly volume of minutes. We again seek comment on a rate structure tiered by volume of minutes. We seek comment on whether a tiered rate structure would enable the Commission to adopt a lower rate for larger facilities. Have providers or jurisdictions adopted rate structures based on either call volume or inmate capacity? If so, what has been their experience? How do the costs of providing service differ among facilities for providers serving multiple facilities? Specifically, we seek identification of costs incurred individually by facility and what proportion of such costs make up the provider's total cost of providing service. We note that Securus, in response to the *2012 ICS NPRM,* submitted cost data broken out by four tiers of facility size. We seek comment on the call volume based tiers used in Securus' filing. Do commenters believe division by such call volume categories is a useful way to establish a tiered rate structure? Or is this type of division too subjective or too specific to be useful for the industry as a whole?

31. If the Commission were to adopt a tiered ICS rate approach by facility size, should the Commission use the breakdown of confinement facility sizes from the Bureau of Justice Statistics? Also, commenters indicate that centralization in call processing is prevalent in the ICS industry, and that this centralization has changed the costs of providing ICS. In light of this centralization, we seek comment on whether differences in the cost to provide ICS remain between differently sized facilities. We also seek comment on whether a tiered rate structure would be more applicable to the way ICS is provided in practice if the rate tiers varied by ICS provider size rather than by facility size.

32. *Tiered Rate Structure between Prisons and Jails.* Some parties claim that the differences between jails and prisons in terms of such factors as size and inhabitants' length of incarceration make the cost of service vary. Others disagree. If the Commission were to adopt such a proposal, we seek comment on how to define ''jails'' and ''prisons.'' Should a jail be defined as a facility where inmates are incarcerated for less than one year? If not, what is the appropriate definition of a jail? Or should the Commission define prisons and all other facilities would be considered jails? We seek comment on whether jails have different communications needs and calling practices than inmates in longer-term facilities like prisons. Commenters advocating for such a difference should explain whether such differences apply uniformly to all jails, to smaller jails, or to jails with certain characteristics. We note that the record indicates that some jails benefit from technological developments that have centralized their ICS operations and lowered the costs of providing ICS. Should we adjust our regulations and adopt different results for prisons and jails, and if so, how? What cost considerations for the provision of ICS affect jails that may not affect, or that may be different from, those that affect prisons? Instead of treating all jails differently than prisons, should we have a tiered structure based on the size of the facility or jail? Do commenters suggesting that jails be treated differently believe that larger jails have characteristics and call volumes similar to prisons? If so, how would the Commission define ''larger'' jails? Should a facility be considered a ''larger jail'' if it has more than 100, 200, 500 or 1000 beds? Would a tiered approach, which would permit higher rates for smaller facilities, adequately address any unique needs of jails? We also seek comment on the impact of ICS provider call processing centralization for prisons and jails. Does this centralization diminish or eliminate differences between the cost to provide ICS in prisons and jails? Are there other distinctions between different types of correctional institutions that the Commission should incorporate as it considers additional rate reforms? Commenters advocating such distinctions should address the considerations noted above with respect to possible distinctions between ''jails'' and ''prisons,'' including how the different facilities should be defined, the basis for drawing the distinctions, and specifically how the distinctions should be reflected in our rules.

33. *Per-Call Cap.* We seek comment on whether the Commission should adopt an overall maximum per-call cap. We note that some states, for example, have created flat-rated rate structures (such as those found in New Mexico and South Carolina) with only a per-call charge, irrespective of the length of the call. Similarly, Washington, DC has adopted a $1.75 per-call intrastate cap. Securus suggests that the Commission adopt an $8.00 maximum charge for interstate ICS calls ''no matter how long the call, no matter the size of the facility, and no matter the location of the originating facility.'' We seek comment on whether the Commission should adopt an overall rate cap and the caps that have been adopted by states and proposed by Securus. How does such overall rate cap ensure that rates are just, reasonable, and fair? Is a per-minute rate cap also necessary to ensure that shorter calls are cost-based and reasonable?

34. *Per-Call Charges.* In the Order, we adopted an interim rate structure with safe harbor levels and rate caps. While we adopted per-minute rate levels to effectuate these rate structure elements, we also provided some flexibility in implementation. ICS providers electing to take advantage of the safe harbor rate levels are permitted to use a rate structure that includes per-call charges.

35. Although we permit the use of per-call charges in the Order, we express serious concerns about such charges. With the significant automation of a modern ICS network, are there any costs that are uniquely incurred during the call initiation phase that would be inappropriate, or difficult, to recover through a pure per-minute rate structure? Some states and facilities have eliminated per-call charges and are presumably able to provide full-cost recovery for ICS providers. What are the experiences of parties (facilities, ICS providers, and ICS users) where per-call charges have been eliminated? What is the experience with such rate structures and do they offer benefits that do not exist with per-minute rate structures? What is the experience for providers and users with these flat-rated rate structures given the identified risks of per-call charges in the ICS context? Are providers able to recover the costs of calls with such a rate structure? Do the benefits of leaving flexibility to the states, facilities, and ICS providers, outweigh the issues associated with per-call charges?

2. Determining Costs for ICS Rates

36. In the Order, the Commission adopted interim rate caps and safe harbor rate levels for interstate ICS. The Order also required ICS providers to file certain ICS-related data to enable the Commission to begin the process of establishing permanent rates. As part of this process, we seek comment on whether there are additional factors, including possibly declining costs related to technological innovations,

that the Commission should consider in order to refine its findings in the Order and how the Commission should proceed in establishing ICS rates for interstate and intrastate ICS. Additionally, we note that the Order adopts a historical cost methodology for the interim rules and we seek comment on what measure of cost—*e.g.,* historical, forward looking—should be adopted for the permanent rate structure.

37. *Impact of Technology Innovations.* The record highlights significant changes in the technology and the equipment used to provide ICS. In some facilities, Telmate offers video conferencing between inmates and their families, email and voice mail services for inmates, a secure social media alternative, and a secure photo-sharing service for inmates and their families. The Virginia DOC expanded its video visitation program in 2010 and offers numerous visitor centers sites at which an inmate's friends and family can connect through videoconferencing. We seek comment on the impact of technological advancements on the ICS industry. Have such advancements reduced the cost of providing ICS? We seek comment on specific ways in which advanced services help to address security concerns and whether such advancements reduce costs. We also invite comment on ways in which advanced services could affect access for inmates with disabilities, and communications between abled inmates and their friends and family with disabilities.

38. We seek comment on the future of voice-based services in correctional settings. In the non-ICS context, voice calling minutes have been falling while other forms of communications (*e.g.,* text messaging, email, social networks) have been growing in importance. We seek comment on the frequency of such alternatives in correctional facilities and, where applicable, the impact on ICS calling volumes. How have ICS providers introduced such alternatives while still providing adequate security capabilities, and why? We seek comment on our legal authority to regulate the rates for such alternative services.

3. International ICS

39. We seek comment on the prevalence of international calling and whether the Commission should take action to reform ICS rates for international calls. The record indicates that although it is feasible to make international calls, international ICS calling is not always an available option for inmates. Do facilities block international calls for security reasons? If so, we seek comment on what specific reasons justify blocking international calls. Several commenters assert that the lack of availability of international calling is particularly burdensome to immigrant inmates and their families. Do most facilities allow international calling? If not, why not? How are such calls priced? Are any additional restrictions applied to such calls, such as time-of-day restrictions or prior-permission requirements? Should the Commission require the availability of international calls, and what would be the source of legal authority that would authorize the Commission adopt such a requirement? If we were to adopt such a requirement, what rates should apply to international calls and how should the Commission set such rates? We seek comment as to whether these rates are appropriate and compensatory.

D. Ancillary Charges

1. Background

40. In response to inquiries in the *2012 ICS NPRM,* the record indicates that ICS providers impose charges on inmates and ICS call recipients that do not recover the costs of providing phone service but rather recover costs associated with functions ancillary to provisioning ICS such as initiating, maintaining and closing debit or prepaid ICS accounts, sending a paper bill or sending calls to a wireless number. The Order adopted requirements that such ancillary service charges related to ICS be cost-based and provides enforcement mechanisms applicable to any challenges. The Bureau released a Public Notice on June 26, 2013 seeking additional comment on these charges including: ''the level of each fee, the total amount of revenue received from each fee, and the cost of providing the service for which the fee recovers.'' 78 FR 42034, July 15, 2013. The record received indicates that providers are charging a variety of fees at fee levels ranging from no fee for account replenishment when a paper check is sent in the mail, to a $7.95 processing fee for payment by credit or debit card, and $11.95 processing fee for payment through Western Union, among others.

2. Discussion

41. In the Order, we require charges for any services that are ancillary to the costs of providing ICS to be cost-based, and require ICS providers to submit cost data for these ancillary service charges as part of the mandatory data request. Here we seek comment on how the Commission can ensure, going forward, that ancillary charges are just, reasonable, and cost-based. For example, the record reflects that ICS providers typically use third parties to process debit and prepaid transactions, and there are concerns that the charges passed on to inmates or their called parties are not entirely cost-based. Is this accurate? If so, what are the actual costs charged to the ICS providers by such third parties? We seek comment on whether the Commission should identify certain ancillary charges that are unreasonable practices and therefore prohibited under the Act?

42. The record indicates that some ICS providers offer ''no fee'' options for replenishing debit or prepaid accounts. What are commenters' experiences with such options? We request that commenters describe any other no- or low-fee options offered by ICS providers. Should the Commission mandate that ICS providers offer such no or low fee options? We seek comment on this approach, including our legal authority to mandate a no or low fee option.

43. Likewise, we seek comment on the cost drivers underlying ICS providers' ancillary service charges. Are charges for these services currently cost-based? Will our complaint process ensure that charges for services that are ancillary to the telecommunications costs of providing ICS are cost-based on an ongoing basis? Do commenters believe that the costs underlying ancillary service charges should be treated as compensable though ICS rates? Can we set a safe harbor rate that will ensure that charges for such ancillary services are cost-based? How would such a safe harbor work? If we set such a safe harbor, what kind of process should be available to ICS providers that believe they cannot recover their costs for such ancillary services? What information should we require the ICS providers to submit to support such requests?

44. Finally, we seek comment on whether some ancillary services charges constitute unjust and unreasonable practices, in violation of section 201(b), or a practice that would lead to unfair rates in violation of section 276, regardless of the level of the charge, because how such charges are imposed make ICS too expensive and thus unavailable to some consumers. The Commission has consistently held that practices may be unjust and unreasonable without regard to the charges related to those practices. Examples of practices that we believe may be unjust and unreasonable to the extent they impose *de minimis* costs to the ICS provider include imposing inactivity charges on a customer's

prepaid account, and charging a customer to close an account and refund their money to them. We seek comment on whether we should consider these charges, or any other ancillary service charges, to be unjust and unreasonable.

E. Prohibiting Call Blocking

1. Background

45. The Commission has a long-standing policy that largely prohibits call blocking. Specifically, the Commission has determined that the refusal to deliver voice telephone calls ''risks degradation of the country's telecommunications network'' and poses a serious threat to the ''ubiquity and seamlessness'' of the network. The issue of call blocking has arisen in multiple contexts in the ICS industry. Throughout this proceeding ICS providers have offered various justifications for their call blocking practices. Here we seek additional comment on these practices which break down into two fundamental types. We invite commenters to address any other types of blocking and we seek comment on whether we need to address blocking beyond the two specific types described below.

2. Billing-Related Call Blocking

46. The Commission sought information in the *2012 ICS NPRM* on billing-related call blocking. 78 FR 4369, Jan. 23, 2013. In the Order above we conclude that billing-related call blocking of interstate ICS calls is only permissible if the ICS provider offers a ''prepaid collect'' option, as described above. We seek comment on whether our conclusion resolves the issues surrounding billing-related blocking of interstate ICS calls. Additionally, we seek comment on whether we should extend our prohibition on blocking to intrastate ICS calls. In particular, we invite comment on whether it is possible to block only interstate calls while not blocking intrastate calls, or whether such a separation is impracticable. In light of our mandate above for ''prepaid collect,'' do the problems Petitioners describe remain? Or is it correct, as commenters have said, that such ''products help to ensure that inmates reach their intended parties regardless of their billing status''? Does our mandate regarding ''prepaid collect'' options address ICS providers' problems of uncollectibles? What other options are there to prevent call blocking due to a lack of a billing relationship between the ICS provider and the called parties' provider, whether ILEC, CLEC, wireless provider or VoIP provider? Should we prohibit ICS providers from entering into a new contract or contract extension for ICS that include collect calling-only requirements unless they offer an alternative prepaid collect calling option? What would be our authority for doing so? We also seek comment on whether our mandate should apply only to interstate collect-only calling, or whether it should also apply to intrastate collect-only calling. Can the two be separated? Under what authority could we mandate a prepaid collect calling option for intrastate ICS?

47. Finally, one ICS provider suggests that the best way to deal with billing-related call blocking is to encourage the use of prepaid or debit ICS accounts. We seek comment on the usefulness and ubiquity of debit and prepaid calling in correctional facilities and whether we should mandate that ICS providers offer such services. Under what authority can we mandate provision of such services?

3. Non-Geographically Based Telephone Number Call Blocking

48. Consumers today can and do obtain telephone numbers that do not reflect their geographic location. In the ICS context, doing so may enable consumers to be charged a lower rate depending on the differences among local, intrastate long distance, and interstate long distance rates. The Commission sought comment on this practice in the *2012 ICS NPRM.* Given the Commission precedent largely prohibiting call blocking, with limited exceptions, we seek comment on whether any types of ICS call blocking may be necessary or appropriate, particularly in relation to non-geographically based telephone numbers. If such blocking is necessary, how can this need be reconciled with Commission precedent? To the extent that commenters assert that blocking occurs to address security concerns, we seek comment on the reason and frequency of such blocking. We seek comment on whether there are any additional concerns that could justify blocking outgoing ICS calls to non-geographically based telephone numbers. Given the Commission's policy against unreasonable call blocking, we are skeptical of the need for call blocking and seek alternatives to blocking that maintain the ubiquity of the national telecommunications network while balancing security needs.

F. Exclusive ICS Contracts

49. We conclude in the Order that competition does not effectively constrain rates for interstate ICS to ensure that such rates are just, reasonable, and fair. While the Commission found that there is competition among ICS providers to provide service to correctional facilities, it concluded that there is not sufficient competition within facilities to ensure that rates are just and reasonable to end users because of exclusive contract arrangements. We seek comment in this section on whether we should encourage competition within correctional facilities to reduce rates.

50. We generally seek comment on whether there are ways to foster competition to constrain rates to just, reasonable, and fair levels within correctional facilities. When the Commission previously sought comment on allowing multiple providers to serve correctional facilities, correctional facilities and ICS providers generally opposed the allowance of multiple providers because of security concerns. What has changed, if anything, in the last decade that may allow for competition among ICS providers within a single facility? If commenters believe that security concerns still provide a reason for not allowing multiple ICS providers within a facility, we seek comment on what the specific concerns are. For example, could a facility have uniform security requirements that would apply to any provider offering service in the facility? What are the advantages and disadvantages of such an approach? In its comments, Verizon states that allowing multiple ICS providers to serve inmates at a correctional facility could promote competition among ICS providers. Verizon also raises the question of whether the security concerns justifying exclusive contracts have been superseded by any technological advances. Do technological advances change the equation? If so, could we expect in the future to rely on competition to ensure just, reasonable, and fair ICS rates for inmates and ICS providers? Are there rules or requirements the Commission could adopt to facilitate such a transition? We seek comment on these issues and the Commission's authority to adopt rules and requirements to facilitate such a transition.

G. Quality of Service

51. In the Order, we observe that, given our conservative safe harbor and rate cap scheme, quality of service should not be negatively impacted by the ICS rates we adopt, and we further encourage continued innovation and efficiencies to improve quality of service. Here, we seek comment on whether it is necessary for the Commission to develop minimum federal quality of service standards that would apply to all facilities. For

example, ICE set forth national detention standards, which established requirements for effective communication, sufficient access, and daily maintenance. Under these standards, facilities must maintain at least a 25 to 1 ratio of detainees to operable telephones. Do prison and jail facilities currently have similar rules or regulations in place to secure the quality of inmate calling services? Have states adopted any regulations of this sort? We seek comment on whether national standards are necessary. Should we establish rules regarding the quality of inmate phone calls, the number of phones in a facility, or the maintenance of telephones? If adoption of such national standards would be beneficial, under what authority could the Commission adopt such rules? We also seek comment on whether we should require ICS providers to include the ratio of telephones to inmates per facility in their annual certification filings. Commenters advocating for such an approach should specify the Commission's legal authority to adopt their proposals.

H. Cost/Benefit Analysis of Proposals

52. Acknowledging the potential difficulty of quantifying costs and benefits, we seek to determine whether each of the proposals above will provide public benefits that outweigh their costs, and we seek to maximize the net benefits to the public from any proposals we adopt. For example, commenters have argued that inmate recidivism is decreased with regular family contact. Accordingly, we seek specific comment on the costs and benefits of the proposals above and any additional proposals received in response to this FNPRM. We also seek any information or analysis that would help us to quantify these costs or benefits. Further, we seek comment on any considerations regarding the manner in which the proposals could be implemented that would increase the number of people who benefit from them, or otherwise increase their net public benefit. We request that interested parties discuss whether, how and by how much they will be impacted in terms of costs and benefits of the proposals included herein. We recognize that the costs and benefits may vary based on such factors as the correctional facility served and ICS provider. We request that parties file specific analyses and facts to support any claims of significant costs or benefits associated with the proposals herein.

II. Procedural Matters

A. Filing Instructions

53. Pursuant to sections 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). Comments and reply comments on this FNPRM must be filed in WC Docket No. 12–375.

- Electronic Filers: Direct cases and other pleadings 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 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 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

B. Ex Parte Requirements

54. The proceeding this FNPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with sec. 1.1206(b). In proceedings governed by sec. 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

C. Paperwork Reduction Act Analysis

55. This FNPRM does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

D. Congressional Review Act

56. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the

Government Accountability Office pursuant to the Congressional Review Act (CRA). *See* 5 U.S.C. 801(a)(1)(A).

E. Initial Regulatory Flexibility Analysis

57. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this FNPRM, of the possible significant economic impact on small entities of the policies and rules addressed in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on or before the dates indicated on the first page of this FNPRM. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

1. Need for, and Objectives of, the Notice

58. In today's Order, the Commission adopted rules to ensure that rates for interstate calling at correctional institutions are just and reasonable, and to that end, established calling rates for interstate inmate calling services (ICS). This FNPRM seeks comment on additional measures the Commission could take to ensure that interstate and intrastate ICS are provided consistent with the statute and public interest, the Commission's authority to implement these measures, and the pros and cons of each measure. The Commission believes that additional action on ICS will help maintain familial contacts stressed by confinement and will better serve inmates with special needs while still ensuring the critical security needs of correctional facilities of various sizes. Specifically, the FNPRM seeks comment on:

- Reforming intrastate ICS rates and practices;
- ICS for the deaf and hard of hearing community;
- Further reforms of interstate and intrastate ICS rates;
- Cost recovery in connection with the provision of ICS;
- Ensuring that charges ancillary to the provision of ICS are cost-based;
- ICS call blocking;
- Ways to foster competition to reduce rates within correctional facilities; and
- Quality of service for ICS.

2. Legal Basis

59. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i)–(j), 201(b) and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b) and 276.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

60. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

61. *Small Businesses.* Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

62. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

63. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by our action.

64. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

65. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

66. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the

72, 70 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by our action.

67. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by our action.

68. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

69. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

70. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by our action.

71. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

72. In this FNPRM, the Commission seeks public comment on options to reform the inmate calling service market. Possible new rules could affect all ICS providers, including small entities. In proposing these reforms, the Commission seeks comment on various options discussed and additional options for reforming the ICS market.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

73. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

74. The FNPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the FNPRM. In addition, the Commission seeks updated data, as described in the FNPRM, from small entities that may be impacted by Commission action on ICS.

75. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM, in reaching its final conclusions and taking action in this proceeding. Specifically, the Commission will conduct a cost/benefit analysis as part of this FNPRM and consider the public benefits of any such requirements it might adopt, to ensure that they outweigh their impacts on small businesses.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

76. None.

III. Ordering Clauses

77. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 201, 225, 276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201, 225, 276, 303(r), the Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 12–375 *are adopted.*

78. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–26377 Filed 11–12–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket No. OST–2012–0147]

RIN 2105–AE08

Disadvantaged Business Enterprise: Program Implementation Modifications

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); rescheduling public listening session; reopening of public comment period.

SUMMARY: On September 18, 2013, the Department of Transportation (DOT) issued a notice announcing a public listening session on October 9, 2013 concerning the proposed changes to the Department's Disadvantaged Business Enterprise (DBE) program found in the Notice of Proposed Rulemaking (NPRM) published on September 6, 2012. The Department also announced that it would be reopening the public comment period from the date of publication until October 30, 2013. However, due to the lapse in government funding on October 1, 2013, the Department canceled the October 9, 2013 meeting. The Department is rescheduling the public listening session on this rulemaking to December 5, 2013 from 11:00 a.m. to 5:00 p.m. Eastern Standard Time. The comment period is extended to December 26, 2013.

DATES: A public listening session will be held on December 5, 2013, in Washington, DC, from 11:00 a.m. EST to 5:00 p.m. EST. The comment period for the NPRM is reopened and extended to December 26, 2013.

ADDRESSES: The public listening session will be held at DOT's Washington, DC Headquarters at 1200 New Jersey Avenue SE., Washington, DC, 20590, in the Media Center auditorium located on the ground floor of the West Building.

FOR FURTHER INFORMATION CONTACT: Jo Anne Robinson, Office of General Law, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–6984, *JoAnne.Robinson@dot.gov.*

SUPPLEMENTARY INFORMATION: On September 6, 2012, the Department published a notice of proposed rulemaking (NPRM) entitled, ''Disadvantaged Business Enterprise: Program Implementation Modifications,'' at 77 FR 54952, that proposed various changes to the Department's DBE program, including: Revisions to personal net worth, application, and reporting forms; modifications to various certification-related provisions of the rule; and revisions to several other provisions of the rule, concerning such subjects as good faith efforts, transit vehicle manufacturers and goal setting. The Department then published a notice on October 25, 2012, at 77 FR 65164, which corrected minor errors in the NPRM related to the Paperwork Reduction Act and extended the public comment period until December 24, 2012. Several commenters suggested that the Department hold a public meeting or listening session on the proposed changes before issuing a final rule. After reviewing the comments, the Department decided to schedule a public listening session on October 9, 2013, as announced in a September 18, 2013 notice. 78 FR 57336. At that time, the Department also announced that it would be reopening the public comment period from the date of publication until October 30, 2013.

However, due to the lapse in government funding on October 1, 2013, the Department canceled the October 9, 2013 meeting with the intent of rescheduling the meeting at a future date and time. The rescheduled listening session will be held on December 5, 2013 from 11:00 a.m. to 5:00 p.m. Eastern Standard Time at the Department's Washington, DC Headquarters, 1200 New Jersey Avenue SE., Washington, DC 20590, in the Media Center auditorium located on the ground floor of the West Building. The public comment period is reopened and extended to December 26, 2013. The public is invited to offer its views on specific aspects of the NPRM set out in the September 18, 2013 **Federal Register** notice that are noted below.

Listening Session Procedures

The listening session will provide an opportunity for the public to speak to the Department about certain aspects of the NPRM. Specifically, the Department is interested in hearing from the public on the following:

1. What are the specific, quantifiable costs and benefits associated with completing or reviewing the proposed forms (Personal Net Worth, Certification Application, Uniform Report on Awards/Commitments; DBE Payment Data) from the perspective of a certifying entity, an applicant firm, or a recipient (where applicable)?

2. What are the specific, quantifiable costs and benefits associated with requiring certified DBEs to submit additional documents with the annual no change affidavit from the perspective of a certifying entity and a certified DBE?

3. What are the specific, quantifiable costs and benefits associated with requiring good faith efforts documentation when bids are due and requiring additional documents (i.e., DBE and non-DBE quotes, DBE subcontracts) from the perspective of a prime contractor, a DBE, and the recipient letting the contract?

We are reopening registration for the listening session. Due to security and seating limitations, any person wishing to participate in the listening session must register no later than November 21, 2013, by going to the OSDBU Web site at *www.dot.gov/osdbu* and following the instructions. If you registered for the October 9th session, you must re-register for the December 5th session. You may attend the session in person (to speak or listen) or participate by Web Conference (comments may be provided through the chat room). The registration form will ask you to identify the party you represent and provide your contact information. If you are attending the session in person, you will be asked to identify the subject(s) described above you plan to address (if any). Speakers will be limited to 5 minutes each; however, the Department may need to reduce the time allotted, if necessary, to provide all participants the opportunity to speak before the session ends. A copy of the agenda will be posted after registration closes.

A panel of Department representatives from the Office of the Secretary and the Operating Administrations will be present to listen to the speakers and may ask questions, if necessary, to seek clarification of comments made by a speaker. However, there will not be a question and answer period during the session where speakers ask questions of the panel. The Department will not respond to questions posed through the chat room. If necessary, the Department may provide additional instructions at the time of the listening session. A transcript of the session will be made a part of the public docket in this rulemaking. All comments submitted through the chat room also will be made a part of the public docket in this rulemaking.

For information on facilities or services for persons with disabilities or to request special assistance at the meeting, please contact Marilyn Hearns in DOT's Office of the General Counsel by telephone (202–366–9154) or by email (*Marilyn.Hearns@dot.gov*) as soon as possible.

Reopening of Comment Period

The comment period is reopened and extended to December 26, 2013, to provide the public an additional opportunity to submit comments on the NPRM or to submit comments in response to views or information provided at the public listening session or in other public comments. You may submit comments (identified by the agency name and DOT Docket ID Number OST–2012–0147) by any of the following methods:

- *Federal Rulemaking Portal:* Go to *www.regulations.gov* and 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 9:00 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Issued this 4th day of November, 2013 at Washington, DC, under authority delegated in 49 CFR 1.27.

Kathryn B. Thomson,

Acting General Counsel.

[FR Doc. 2013–27119 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–9X–P

Notices

Federal Register

Vol. 78, No. 219

Wednesday, November 13, 2013

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 6, 2013.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by December 13, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Generic Fruit Crops, Marketing Order Administration Branch.

OMB Control Number: 0581–0189.

Summary of Collection: Industries enter into a marketing order program under the Agricultural Marketing Agreement Act (AMAA) of 1937, as amended by U.S.C. 601–674. Marketing Order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops in specified production areas, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the market orders, producers and handlers are nominated by their respective peers and serve as representatives on their respective committees/boards.

Need and Use of the Information: The information collected is essential to provide the respondents the type of service they request. The committees and boards have developed forms as a means for persons to file required information relating to supplies, shipments, and dispositions of their respective commodities. The information is used only by the authorized committees employees and representatives of USDA including AMS, Fruit and Vegetable Programs' regional and headquarters' staff to administer the marketing order programs.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 15,087.

Frequency of Responses: Recordkeeping; Reporting; On occasion, Quarterly; Biennially; Weekly; Semi-annually; Monthly; Annually.

Total Burden Hours: 8,291.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–27127 Filed 11–12–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 6, 2013.

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.

Economic Research Service

Title: Survey on Rural Community Wealth and Health Care Provision.

OMB Control Number: 0536—NEW.

Summary of Collection: Health care services is one of the largest and most rapidly growing industries in rural

America, and adequate provision of health care services is critical for achieving economic development and improved well-being of rural people. In many rural communities, the health care services sector is the largest employer, and rapid growth in this sector is occurring and likely will continue, especially as the Baby-Boom generation retires. Provision of adequate health care services may be a key factor attracting retirees and other migrants to rural areas, contributing to rural growth and prosperity. Despite recent growth and potential for continued growth in this sector, many rural communities suffer from poor access to health care services, especially because of the limited supply of health care professionals. The authority to collect this information is under 7 U.S.C. 2204(a), 7 U.S.C. 2204(b) and 7 U.S.C. 2661.

Need and use of the Information: The Economic Research Service will collect information using a survey to address gaps in existing knowledge about the relationships between community development and rural health care provisions by investigating these issues from the perspective of members of rural communities, including health care providers and community leaders. The study will be based on a sample of 150 communities in three major regions of the country. The study will also collect information on how rural small towns attract and retain primary health care providers, considering the broad range of community assets and amenities that may attract providers. If the proposed information collection is not conducted, research and knowledge on the roles rural communities play in recruiting and retaining health care providers will remain limited.

Description of Respondents: Business or others for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 2,850.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,198.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–27129 Filed 11–12–13; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Performance Review Board Appointments

AGENCY: Office of Human Resource Management, Departmental Management, USDA.

ACTION: Notice of appointment.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service (SES) and Senior Level (SL) and Scientific or Professional (ST) Performance Review Boards (PRB) for the Department of Agriculture, as required by 5 U.S.C. 4314(c)(4). Agriculture has a total of six PRBs: the Secretary's PRB; Departmental Management and Staff Offices PRB; Natural Resources and Environment PRB; Farm and Foreign Agricultural Services, Rural Development, Food, Nutrition and Consumer Services PRB; Marketing and Regulatory Programs, Food Safety PRB; and Research, Education, and Economics PRB. The PRBs comprise career and noncareer executives and Chairpersons to make recommendations on the performance of executives to the Secretary, including performance ratings and bonuses for SES, SL, and ST employees. The boards meet annually to review and evaluate performance appraisal documents and provide written recommendations to the Secretary for final approval of performance ratings and base salary adjustments.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives may be appointed by mission areas to the USDA PRBs:

Office of the Secretary

Baenig, Brian; Batta, Todd; Gonzales, Oscar; Harden, Krysta.; Holtzman, Max T.; MacMillan, Anne; Wheelock, Leslie.

Departmental Management (OAO, OALJ, OCIO, OHRM, OHSEC, OJO, OO, OPPM, and OSDBU) and Staff Offices (OASCR, OCE, OC, OCFO, OCR, OGC and NAD)

Bange, Gerald A.; Baumes, Harry S.; Bender, Stuart; Bice, Donald; Black, David O. ; Brady, Terence M.; Brewer, John; Bumbary-Langston, Inga P.; Chasteen, G. Taylor; Christian, Lisa A.; Clanton, Michael W.; Coffee, Richard; Cook, Cheryl L.; Davenport, Peter; Foster, Andrea L.; Glauber, Joseph; Grahn, David P.; Hawk, Gilbert; Heard, Robin; Hohenstein, William G.; Holladay, Jon; Hunter, Joyce; Jackson, Yvonne T.; Jeanquart, Roberta; Jenson, William; Johansson, Robert C.; Jones, Carmen; Jones, Diem Linh L.; Kelly, Janet Karlease; Klurfeld, Roger J.; Leland, Arlean; Leonard, Joe; Linden, Ralph A.; Lippold, David; Lowe, Christopher S.; Lowe, Stephen O.; Maddux, Sheryl; McClam, Charles; Milton, William; Moulton, Robert Jeffrey; Parker, Carolyn C.; Parham, Gregory L.; Paul, Matt; Pfaeffle, Frederick; Pino, Lisa; Repass, Todd; Robinson, Quinton; Romero, Ramona; Ruiz, Carl Martin; Shearer, David P.; Shorter, Malcom; Speed, Randy L.; Turner, Calvin; Vos, John P.; Wallace, Charles; Ware, Joseph A.; Washington, Gary S.; White, John S.; Wilburn, Curtis; Wiley, Curtis; Wilusz, Lisa; Wright, Ann; Young, Benjamin; Young, Mike; Zehren, Christopher J.

Marketing and Regulatory Programs (MRP)

Avalos, Ed; Cordova, Elvis; Walsh, Joani L.

Agricultural Marketing Service

Alonzo, Anne; Bailey, Douglas; Barnes, Rex; Coale, Dana; Earnest, Darryl; Guo, Ruihong; McEvoy, Miles; Morris, Craig; Neal, Arthur; Parrott, Charles W.

Animal and Plant Health Inspection Service

Bandla, Murali; Bech, Rebecca; Berger, Philip; Blakely, Cheryle L.; Brown, Charles; Clark, Larry; Clay, William; Clifford, John; Davidson, Mark L.; Diaz-Soltero, Hilda; Dick, Jere; El Lissy, Osama A.; Firko, Michael J.; Gipson, Chester A.; Granger, Larry; Gregoire, Michael; Grode, Jeffrey; Hill, Jr., Richard; Hoffman, Neil E.; Holland, Marilyn; Huttenlocker, Robert; Jones, Bethany; Juarez, Bernadette; Kaplan, David; Lautner, Elizabeth; Levings, Randall L.; McCammon, Sally L.; McCluskey, Brian; Mendoza, Jr., Martin; Morgan, Andrea; Murphy, Virginia; Myers, Thomas; Royer, Matthew; Shea, Kevin; Shere, Jack; Simmons, Beverly; Smith, Cynthia; Thiermann, Alejandro B.; Thompson, Barbara L.; Watson, Michael T.; Washington, Gary S.; Wiggins, Marsha A.; Zakarka, Christine.

Grain Inspection, Packers and Stockyards Administration

Alonzo, Mary C.; Jones, Randall; Keith, Susan; Mitchell, Lawrence W.

Food Safety

Hagen, Elisabet;, Ramos, Adela; Ronholm, Brian; Almanza, Alfred; Banegas, Ronald; Basu, Parthapratim; Blake, Carol L.; Chen, Vivian; Dearfield, Kerry L.; Derfler, Philip; Edelstein, Rachel; Engeljohn, Daniel; Esteban, Jose Emilio; Garcia, Joseph L.; Gilmore, Keith Allyn; Hill, Joseph; Jones, Ronald; Kause, Janell R.; Lowe, Mary F.; Mian, Haroon S.; Myers, Jacqueline; Nintemann, Terri; Roth, Jane; Sidrak, Hany Z.; Smith, William; Stevens, Janet; Tawadrous, Armia; Tohamy, Soumaya M.; Watts, Michael.

Farm and Foreign Agricultural Services

Gutter, Karis T.; Scuse, Michael; Taylor, Alexis; Vetter, Darci.

Foreign Agricultural Service

Foster, Christian; Karsting, Philip; Nuzum, Janet; Palmieri, Suzanne; Quick, Bryce; Riemenschneider, Robert; Sheikh, Patricia.

Farm Service Agency

Beyerhelm, Christopher; Dean, Telora T.; Diephouse, Gregory; Garcia, Juan M.; Gwinn, James; Harwood, Joy; Monahan, James; Rucker, Mark A.; Schmidt, John M.; Stephenson, Robert; Thompson, Candace; Trimm, Alan; Ward, Bruce Edward; Ware, Heidi Grace.

Risk Management Agency

Alston, Michael; Hand, Michael; Nelson, Leiann H.; Willis, Brandon C.; Witt, Timothy; Worth, Thomas W.

Food, Nutrition and Consumer Services (FNCS)

Arena-DeRosa, James; Arnette, Donald; Bailey Jr., Robin David; Barnes, Darlene; Burr, David Glenn; Christenson, Daniel Richa; Concannon, Kevin; Dombroski, Patricia; English, Timothy D.; Jackson, Yvette S.; Kane, Deborah J.; Ludwig, William; Mande, Jerold; Post, Robert C.; Rowe, Audrey; Shahin, Jessica; Thornton, Jane; Tribiano, Jeffrey.

Rural Development (RD)

Ferguson, Katherine; Kunesh, Patrice; O'Brien, Doug.

Rural Business Service

Hadjy, Pandor; Parker, Chadwick O.

Rural Housing Service

Allen, Joyce; Banegas, Ronald; Davis, Richard A.; Glendenning, Roger; Hannah, Thomas; Hooper, Bryan; Primrose, Edna; Ross, Robert H.; Salguero, Francisco.

Rural Utilities Service

Ackerman, Kenneth; Adams, Keith; Adelstein, Jonathan S.; Bojes, Gary; Elgohary, Nivin; Padalino, John C.; Ponti-Lazaruk, Jacqueline; Zufolo, Jessica.

Natural Resources and Environment

Blazer, Arthur; Bonnie, Robert Farrell; Harrell, Meryl; Mills, Ann C.

Forest Service

Agpaoa, Elizabeth; Atkinson, Kathleen; Bedwell, James; Blount, Emilee; Brown, Thomas C.; Bryant, Arthur; Bytnerowicz, Andrzej; Christiansen, Victoria; Cleaves, David A.; Cohen, Warren Bruce; Coleman, Angela V.; Connaughton, Kent P.; Cordell, Harold K.; Cullen, Daniel; DeCoster, Timothy P.; Dixon, Antione; Doudrick, Robert; Ferguson, Tony; Ferrell, David L.; Foster, George S.; Friend, Alexander L.; Grant, Gordon E.; Guldin, Richard; Gutman, Theodore H.; Hammel, Kenneth E.; Harbour, Thomas C.; Hubbard, James E.; Iverson, Louis R.; Jiron, Daniel J.; Joyner, Calvin N.; Krueger, Faye L.; Lago, Jacquelyn L.; Lemly, A. Dennis; Lepore, Mary Beth; Lugo, Ariel E.; Mangold, Robert D.; McGuire, Jennifer; Meade, Joe L.; Meinzer, Frederick C.; Mezainis, Valdis E.; Moore, Randy; Myers, Jr., Charles L.; Nash, Douglas R.; Pena, James M.; Pendleton, Beth G.; Peterson, David L.; Phipps, John E.; Rains, Michael T.; Raphael, Martin G.; Rasure, Nora B.; Reaves, Jimmy L.; Richmond, Charles S.; Ries, Paul F.; Rodriguez-Franco, Carlos; Ross, Robert J.; Sears, George A.; Shortle, Walter C.; Smith, Gregory C.; Spies, Thomas A.; Stanturf, John A.; Strong, Thelma J.; Thompson III, Frank R.; Tidwell, Thomas; Tooke, Tony; Vose, James M.; Wagner, Mary A.; Wear, David; Weldon, Leslie; West, Cynthia.

Natural Resources Conservation Service

Barry, Gayle N.; Boozer, Astor F.; Christensen, Thomas; Coleman, Ray-Deleon J.; Erickson, Terrell; Gelburd, Diane; Golden, Micheal; Herbert, Noller; Honeycutt, C. Wayne; Jordan, Leonard; Kramer, Anthony; Kunze, Stephen; Laur, Michele; Perry, Janet; Reed, Lesia; Salinas, Salvador; Sims, Richard; Smith, David W.; Suarez Oliva, Carlos; Weller, Jason; Wilkes, Homer L.

Research, Education and Economics

Abebe, Yeshimebet; Bartuska, Ann; Onwulata, Charles; Ramaswamy, Gita; Woteki, Catherine.

Agricultural Research Service

Ahuja, Lajpat R.; Allen, Lindsay; Arnold, Jeffrey G.; Baldus, Lisa; Brennan, Deborah; Brenner, Richard; Bretting, Peter K.; Chandler, Laurence; Cleveland, Thomas; Cregan, Perry B.; Erhan, Sevin; Fayer, Ronald; Gay, Cyril G.; Gibson, Paul; Gottwald, Timothy R.; Hackett, Kevin J.; Hammond, Andrew; Harris, Ellen; Hatfield, Jerry L.; Hefferan, Colien; Huber, Steven C.; Hunt, Patrick G.; Jackson, Thomas J.; Jacobs-Young, Chavonda; Jenkins, Johnie Norton; Kappes, Steven; King, Jr., Edgar; Klesius, Phillip Harry; Kochian, Leon V.; Kunickis, Sheryl; Lillehoj, Hyun S.; Lindsay, James A.; Liu, Simon; Loper, Joyce E.; Magill, Robert; Marshall, David; Matteri, Robert; Mattoo, Autar K.; McGuire, Michael; McMurtry, John; Nackman, Ronald J.; Ort, Donald R.; Pollak, Emil; Rango, Albert; Rexroad, Jr., Caird; Riley, Ronald T.; Sebesta, Paul; Shafer, Steven; Simmons, Mary W.; Smith, Timothy P.; Spence, Joseph; Suarez, David Lee; Swietlik, Dariusz; Teal, Peter; Upchurch, Dan; Vogel, Kenneth P.; Whalen, Maureen; Willett, Julious L.; Yates, Allison; Zhang, Howard.

Economic Research Service

Bianchi, Ronald; Bohman, Mary; Munisamy, Gopinath; Pompelli, Gregory K.; Variyam, Jayachandran N.; Weinberg, Marca J.

National Agricultural Statistics Service

Barnes, Kevin L.; Bass, Robert; Bennett, Norman; Clark, Cynthia; Hamer, Jr., Hubert; Harris, James Mark; Parsons, Joseph L.; Picanso, Robin; Prusacki, Joseph; Reilly, Joseph; Valivullah, Michael.

National Institute of Food and Agriculture

Broussard, Meryl; Desbois, Michel; Holland, Robert E.; Montgomery, Cynthia R.; Otto, Ralph; Qureshi, Muquarrab A.; Ramaswamy, Sony; Sheely, Deborah.

DATES: Effective October 24, 2013.

FOR FURTHER INFORMATION CONTACT: William Milton, Director, Office of Human Resources Management, telephone: (202) 690–2139, email: *william.milton@dm.usda.gov.*or Patricia Moore, Director, Executive Resources Management Division, telephone: (202) 720–8629, email: *patty.moore@dm.usda.gov.*

Dated: November 1, 2013.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2013–27124 Filed 11–12–13; 8:45 am]

BILLING CODE 3410–96–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0048]

Evaluation of Established Plant Pests for Action at Ports of Entry

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have been and are assessing certain plant pests that are present in the United States to determine whether we should take action to mitigate the risk posed by those pests when they are found in consignments of imported

goods at ports of entry into the United States. We have determined that it is no longer appropriate or necessary to take such action on some plant pests on which we had been taking action at ports of entry because we are not taking any regulatory action on those same pests when we find them in interstate movement, due to our scientific determination that we do not need to mitigate their pest risk. This process relieves restrictions that are no longer needed and ensures that actions taken on plant pests found in imported goods are consistent with the actions we take on those same pests when they appear in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Regulatory Policy Specialist, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2018; or Ms. Diane L. Schuble, National Coordinator for Official Control, Pest Detection and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1237; (301) 851–2334.

SUPPLEMENTARY INFORMATION: Under the Plant Protection Act, as amended (PPA, 7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests within the United States. The Secretary has delegated this responsibility to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Pursuant to the PPA, when the Secretary considers it necessary to prevent the dissemination of a plant pest that is new to or not known to be widely prevalent or distributed within and throughout the United States, the Secretary may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, noxious weed, biological control organism, plant product, article, or means of conveyance that, among other things, is moving into the United States and that the Secretary has reason to believe is infested with a plant pest at the time of the movement. Under this PPA authority, consignments of imported articles are inspected at the port of entry to determine whether plant pests are associated with them and, if so, prescribe remedial measures as described in the Act. APHIS typically refers to prescribing measures to address the pest risk as ''taking action'' at the port of entry to prevent a plant pest from being introduced into or further disseminated within the United States. Pests that are subject to such actions are referred to as ''actionable pests.''

APHIS determines whether a pest is actionable based on its novelty and known prevalence or distribution within and throughout the United States, its potential harm to U.S. agricultural, environmental, or other resources, and the need to mitigate its pest risk, if any. However, after APHIS determines that a pest is actionable, circumstances may change, and it may no longer be necessary or be an effective use of resources to take action on the pest at ports of entry. For example, a bacterium could cause disease in a plant, but also could have become widespread in the United States, making any future control efforts ineffective and a waste of limited resources. We may lack effective control methods for an insect pest that is present in the United States, which would result in taking action that will likely not prevent the pest from causing damage but will continue to expend limited resources. Or, for example, a mealybug could damage certain plants, but additional experience with the pest may reveal that the damage is not of sufficient plant pest risk or economic importance to merit action at the port of entry. These circumstances often mean that no restrictions are placed on the interstate movement of articles infested with these pests when the articles are moved interstate. It is important to make the actions we take at the port of entry consistent with the actions taken in interstate movement, to maintain a uniform and consistent pest risk safeguarding and trade policy.

To ensure that we are taking action at the ports of entry only when such action is warranted, APHIS has started to assess currently actionable plant pests that are present in the United States to determine which specific pests we should continue to take action on at the port of entry. The assessment is based on a number of factors, including:

- The extent of the pest's distribution in the United States;
- The pest's impacts on the economy (including its potential impacts on export markets), agricultural production, and the environment;
- The scientific knowledge we have about the pest and the risk it poses; and
- The availability and effectiveness of control or eradication tools for the pest.

After we have completed our assessment, we share the information with the National Plant Board, a group of State plant health agencies. The States conduct their own reviews and provide additional information to help inform APHIS' decisionmaking. For example, States may have additional information on the presence or distribution of a pest in their States, on the damage that pest causes, or potential control tools.

After reviewing the information provided by the States, APHIS makes a decision on whether to continue taking action at ports of entry to mitigate the risk associated with a specific plant pest. Data leading to the decisions are documented in letters that are available on the Web at *http://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/non-reg-pests.shtml.* As of September 2013, APHIS has determined that 71 pests on which we had been taking action at ports of entry to address their risk no longer qualify under the PPA as requiring such action.

Done in Washington, DC, this 6th day of November 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–27132 Filed 11–12–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0007]

Notice of Affirmation of Addition of a Treatment Schedule for Methyl Bromide Fumigation of Blueberries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are affirming our earlier determination that it was necessary to immediately add to the Plant Protection and Quarantine Treatment Manual a treatment schedule for methyl bromide fumigation of blueberries for Mediterranean fruit fly and South American fruit fly. In a previous notice, we made available to the public for review and comment a treatment evaluation document that described the new treatment schedule and explained why we have determined that it is effective at neutralizing these fruit flies.

DATES: *Effective Date:* Effective on November 13, 2013, we are affirming the addition to the Plant Protection and Quarantine Treatment Manual of the treatment described in the notice published at 78 FR 36507–36508 on June 18, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P.S. Gadh, Senior Risk Manager–Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2018.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR chapter III are intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. Under those regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. The phytosanitary treatments regulations in part 305 of 7 CFR chapter III set out standards for treatments required in parts 301, 318, and 319 of 7 CFR chapter III for fruits, vegetables, and other articles.

In § 305.2, paragraph (b) states that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual.[1] Section 305.3 sets out a process for adding, revising, or removing treatment schedules in the PPQ Treatment Manual. In that section, paragraph (b) sets out the process for adding, revising, or removing treatment schedules when there is an immediate need to make a change. The circumstances in which an immediate need exists are described in § 305.3(b)(1). They are:

- PPQ has determined that an approved treatment schedule is ineffective at neutralizing the targeted plant pest(s).
- PPQ has determined that, in order to neutralize the targeted plant pest(s), the treatment schedule must be administered using a different process than was previously used.
- PPQ has determined that a new treatment schedule is effective, based on efficacy data, and that ongoing trade in a commodity or commodities may be adversely impacted unless the new treatment schedule is approved for use.
- The use of a treatment schedule is no longer authorized by the U.S. Environmental Protection Agency or by any other Federal entity.

In accordance with § 305.3(b), we published a notice[2] in the **Federal Register** on June 18, 2013 (78 FR 36507–36508, Docket No. APHIS–2013–0007), announcing our determination that a new methyl bromide treatment schedule to mitigate risk from two fruit fly species, *Ceratitis capitata* (Mediterranean fruit fly) and *Anastrepha fraterculus* (South American fruit fly) is effective, based on evidence presented in a treatment evaluation document (TED) we made available with the notice. We also determined that the ongoing trade of blueberries would be adversely impacted unless the new treatment schedule is approved for use. The treatment was added to the PPQ Treatment Manual, but was subject to change or removal based on public comment.

We solicited comments on the notice for 60 days ending August 19, 2013. We received no comments by that date. Therefore, in accordance with the regulations in § 305.3(b)(3), we are affirming our addition of a methyl bromide treatment schedule to mitigate risk from *C. capitata* and *A. fraterculus,* as described in the TED made available with the previous notice. The treatment schedule is numbered T101-i-1–2. The treatment schedule will be listed in the PPQ Treatment Manual, which is available as described in footnote 1 of this document.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 6th day of November 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–27134 Filed 11–12–13; 8:45 am]

BILLING CODE 3410–34–P

[1] The Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

[2] To view the notice and the treatment evaluation document, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0007.*

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4284, subpart G, Rural Business Opportunity Grant Program.

DATES: Comments on this notice must be received by January 13, 2014 to be considered.

FOR FURTHER INFORMATION CONTACT: Mr. Chad Parker, Deputy Administrator, Rural Business-Cooperative Service, USDA, Room 4016-South, MS 3252, 1400 Independence Ave. SW., Washington, DC 20250. Telephone: (202) 720–7558, Email *chad.parker@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rural Business Opportunity Grants.

OMB Number: 0570–0024.

Expiration Date of Approval: March 31, 2014.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the Rural Business Opportunity Grant (RBOG) program is to promote sustainable economic development in rural areas. This purpose is achieved through grants made by the Rural Business-Cooperative Service (RBS) to public bodies, non-profit corporations, Indian Tribes on Federal or State reservations and other Federally-recognized tribal groups, and cooperatives whose members are primarily rural residents to pay costs of economic development planning and technical assistance for rural businesses. The regulations contain various requirements for information from grant applicants and recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to ensure that funds obtained from the Government are used appropriately. Objectives include gathering information to determine the eligibility and financial capability of the applicant, to determine the eligibility of the proposed use of funds, to assess the quality of the project for evaluation and grant selection, and to monitor grantees to ensure funds are used in accordance with approved scopes of work and applicable laws and regulations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7.4 hours per response.

Respondents: Public bodies, non-profit corporations, Indian Tribes on Federal and State reservations and other Federally-recognized tribal groups, and cooperatives whose members are primarily rural residents.

Estimated Number of Respondents: 267.

Estimated Number of Responses per Respondent: 9.

Estimated Number of Responses: 1971.

Estimated Total Annual Burden on Respondents: 17,842.25.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, (202) 692–0040.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of Rural Business-Cooperative Service's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments on the paperwork burden may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 26, 2013.

Lillian Salerno,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2013–27097 Filed 11–12–13; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 131022882–3882–01]

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2014 Annual Surveys in the Manufacturing Area. The 2014 Annual Surveys consist of the Annual Survey of Manufactures, the Business R&D and Innovation Survey (BRDIS), and the Manufacturers' Unfilled Orders Survey. We have determined that annual data collected from these surveys are needed to aid the efficient performance of essential governmental functions, and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in the surveys. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Mendel D. Gayle, Chief, Manufacturing and Construction Division at (301) 763–4587 or by email at *mendel.d.gayle@census.gov.*

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct mandatory surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, sections 61, 81, 131, 182, 193, 224, and 225. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The data collected in the surveys will be within the general scope and nature of those inquiries covered in the economic census. The next economic census will be conducted for the year 2017.

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics, such as total value of shipments, employment, payroll, workers' hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey is conducted on a sample basis, and covers all manufacturing industries, including data on plants under construction but not yet in operation. All data items are collected on a mandatory basis under the authority of Title 13, United States Code.

Business R&D and Innovation Survey

The Business R&D and Innovation Survey (BRDIS) measures spending on research and development activities by United States businesses. This survey replaced the Survey of Industrial Research and Development that had been collected since the 1950's. The BRDIS collects global as well as domestic spending information, more detailed information about the R&D workforce, and information regarding innovation and intellectual property from U.S. businesses. The Census Bureau collects and compiles this information in accordance with a joint project agreement between the National Science Foundation (NSF) and the Census Bureau. The NSF posts the joint project's information results on their Web site. All data items are collected on a mandatory basis under the authority of Title 13, United States Code.

Manufacturers' Unfilled Orders Survey

The Manufacturers' Unfilled Orders Survey collects data on sales and unfilled orders in order to provide annual benchmarks for unfilled orders for the monthly Manufacturers' Shipments, Inventories, and Orders (M3) survey. The Annual Survey of Manufactures (ASM) provides annual benchmarks for the shipments and inventory data collected in the M3 monthly survey. The Manufacturers' Unfilled Orders Survey data will also be used to determine whether it is necessary to collect unfilled orders data for specific industries on a monthly basis; some industries are not requested to provide unfilled orders data on the M3 Survey. All data items are collected on a mandatory basis under the authority of Title 13, United States Code.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 45, OMB approved the annual surveys under the following OMB control numbers: Annual Survey of Manufactures, 0607–0449; Business R&D and Innovation Survey, 0607–0912; and Manufacturers' Unfilled Orders Survey, 0607–0561.

Based upon the foregoing, I have directed that the Annual Surveys in the Manufacturing Area be conducted for the purpose of collecting these data.

Dated: November 6, 2013.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2013–27177 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 131029910–3910–01]

Annual Wholesale Trade Survey

AGENCY: Bureau of the Census, Department of Commerce

ACTION: Notice of determination.

SUMMARY: The United States Department of Commerce's Bureau of the Census (Census Bureau) publishes this notice to

announce that the Director of the Census Bureau has determined the need to conduct the 2013 Annual Wholesale Trade Survey (AWTS). The AWTS covers employer firms with establishments located in the United States and classified in the Wholesale Trade sector as defined by the 2007 North American Industry Classification System (NAICS). Through this survey, the Census Bureau will collect data covering annual sales, e-commerce sales, purchases, total operating expenses, year-end inventories held both inside and outside the United States, commissions, total operating revenue, and gross selling value, for three components of wholesale activity: wholesale distributors; manufacturers' sales branches and offices; and agents, brokers, and electronic markets. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs such as economic and market analysis, company performance, and forecasting future demand. The Census Bureau conducts the AWTS to provide continuing and timely national statistical data on wholesale trade annually.

ADDRESSES: The Census Bureau will provide report forms to businesses included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: William Abriatis, Service Sector Statistics Division, at (301) 763–3686 or by email at *william.m.abriatis@census.gov.*

SUPPLEMENTARY INFORMATION: Sections 182, 224, and 225 of Title 13 of the United States Code authorize the Census Bureau to take surveys that are necessary to produce current data on the subjects covered by the major censuses. As part of this authorization, the Census Bureau conducts the AWTS to provide continuing and timely national statistical data on wholesale trade activity every year for the period between economic censuses. The AWTS covers employer firms with establishments located in the United States and classified in the Wholesale Trade sector as defined by the 2007 NAICS. The 2013 AWTS will collect data for three components of wholesale activity: wholesale distributors; manufacturers' sales branches and offices; and agents, brokers, and electronic markets. For wholesale distributors, the Census Bureau will collect data covering sales, e-commerce sales, year-end inventories held inside and outside the United States, purchases, and total operating expenses. For manufacturers' sales branches and offices, the Census Bureau will collect data covering annual sales, e-commerce sales, year-end inventories held inside and outside the United States, and total operating expenses. For agents, brokers, and electronic markets, the Census Bureau will collect data covering commissions, total operating revenue, gross selling value, and total operating expenses. The Census Bureau has determined that this survey is necessary as these data are not available publicly on a timely basis from non-governmental or other government sources.

Firms were selected for the AWTS survey using a stratified random sample based on industry groupings and annual sales size. We will provide report forms to the firms covered by this survey in February 2013, and will require their responses within 50 days after receipt. Firms' responses to the AWTS are required by law (Title 13 U.S.C. 182, 224, and 225). The sample of firms selected will provide, with measurable reliability, statistics on annual sales, e-commerce sales, purchases, total operating expenses, year-end inventories held both inside and outside the Unites States, commissions, total operating revenue, and gross selling value for 2013.

The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the quinquennial economic census, which was most recently conducted in 2012. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs such as economic and market analysis, company performance, and forecasting future demand.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. 3501–3521, OMB approved the AWTS under OMB control number 0607–0195.

Based upon the foregoing, I have directed that the annual survey be conducted for the purpose of collecting these data.

Dated: November 6, 2013.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2013–27160 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Federal Economic Statistics Advisory Committee Meeting

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Federal Economic Statistics Advisory Committee (FESAC). The Committee will advise the Directors of the Economics and Statistics Administration's (ESA) two statistical agencies, the Bureau of Economic Analysis (BEA) and the Census Bureau, and the Commissioner of the Department of Labor's Bureau of Labor Statistics (BLS) on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: December 13, 2013. The meeting will begin at approximately 9:00 a.m. and adjourn at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Conference Center, 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: James R. Spletzer, Designated Federal Official, Department of Commerce, U.S. Census Bureau, Research and Methodology Directorate, Room 5K175, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–4069, email: *james.r.spletzer@census.gov.* For TTY callers, please call the Federal Relay Service (FRS) at 1–800–877–8339 and give them the above listed number you would like to call. This service is free and confidential.

SUPPLEMENTARY INFORMATION: Members of the FESAC are appointed by the Secretary of Commerce. The Committee advises the Directors of the BEA, the Census Bureau, and the Commissioner of the Department of Labor's BLS, on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. The Committee is established in accordance with the Federal Advisory Committee

Act (Title 5, United States Code, Appendix 2).

The meeting is open to the public, and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Designated Federal Official named above. If you plan to attend the meeting, please register by Monday, December 2, 2013. You may access the online registration form with the following link: *http://www.regonline.com/fesac_dec2013_meeting.* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Designated Federal Official as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: November 6, 2013.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2013–27152 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Membership of the Economic Development Administration Performance Review Board

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of membership on the Economic Development Administration's Performance Review Board Membership.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the Economic Development Administration (EDA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for EDA's Performance Review Board begins on November 13, 2013.

FOR FURTHER INFORMATION CONTACT: Ruthie B. Stewart, U.S. Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482–5243.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Economic Development Administration (EDA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for EDA's Performance Review Board begins on November 13, 2013. The name, position title, and type of appointment of each member of EDA's Performance Review Board are set forth below by organization:

1. *Department of Commerce, Economic Development Administration (EDA)* Jeannette P. Tamayo, Chicago Regional Director, Career SES, serves as Chairperson
2. *Department of Commerce, International Trade Administration (ITA)* Kenneth J.E. Hyatt, Acting Deputy Under Secretary for International Trade, International Trade (ITA), Political Advisor
3. *Department of Commerce, Minority Business Development Agency (MBDA)* Edith J. McCloud, Associate Director for Management, Career SES
4. *Department of Commerce, Office of the Secretary (OS)* Gordon T. Alston, Director, Financial Reporting and Internal Controls, Career SES.

Dated: November 6, 2013.

Debbie Pfaff,

Director, Office of Staffing, Recruitment and Classification, Department of Commerce Human Resources Operations Center.

[FR Doc. 2013–27080 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[11/01/2013 through 11/06/2013]

Firm name	Firm address	Date accepted for investigation	Product(s)
Controlled Products, LLC	200 Howell Drive, Dalton, GA 32522	11/04/2013	The firm manufactures artificial turf.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[11/01/2013 through 11/06/2013]

Firm name	Firm address	Date accepted for investigation	Product(s)
Precise Industries, Inc	639 Lakeview Avenue, Lowell, MA 01850.	11/04/2013	The firm manufactures parts, forms and other items from sheet metal to customer specifications.
Norman Tool, Inc	15415 Old State Road, Evansville, IN 47725.	11/06/2013	The firm manufactures abrasion wear testing machines.
Pacific Integrated Handling, Inc	10215 Portland Ave E, Ste A, Tacoma, WA 98445.	11/05/2013	The firm manufactures materials handling machinery for lifting, handling, loading, and unloading.
Daktronics, Inc	201 Daktronics Drive, Brookings, SD 57006.	11/06/2013	The firm manufactures electronic sign displays, audio systems and timing products.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: November 6, 2013.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2013–27099 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–69–2013]

Foreign-Trade Zone 32—Miami, Florida, Authorization of Production Activity, Almod Diamonds, Ltd. (Jewelry and Precious Stones), Miami, Florida

On June 21, 2013, the Greater Miami Foreign-Trade Zone, Inc., grantee of FTZ 32, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Almod Diamonds, Ltd., within FTZ 32—Site 1, in Miami, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 40427, 7–5–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: November 6, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–27179 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–94–2013]

Foreign-Trade Zone (FTZ) 99—Wilmington, Delaware, Notification of Proposed Production Activity, Noramco, Inc., (Pharmaceutical Intermediate), Wilmington, Delaware

The Delaware Economic Development Office, grantee of FTZ 99, submitted a notification of proposed production activity to the FTZ Board on behalf of Noramco, Inc. (Noramco), located in Wilmington, Delaware. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 4, 2013.

The Noramco facility is located at 500 Swedes Landing, Wilmington, Delaware. A separate application for subzone designation at the Noramco facility is being submitted and will be processed under Section 400.38 of the FTZ Board's regulations. The facility is used for the production of a pharmaceutical intermediate, tapentadol hydrochloride, which Noramco plans to transfer to another FTZ facility for further processing. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and specific products listed in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Noramco from customs duty payments on the foreign status inputs used in export production. On its domestic sales, Noramco would be able to choose the duty rate during customs entry procedures that apply to the tapentadol hydrochloride (duty free) for the foreign status inputs noted below. Additionally, customs duties could be deferred or reduced on foreign status production equipment.

The chemical inputs sourced from abroad are: 2S,3R-1-(dimethylamino)-3-(3-methoxyphenyl)-2-methyl-3-pentanol; and, (2R,3R)-3-(3-methoxyphenyl)-N,N,2-trimethylpentanamine monohydrobromide (duty rate, 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is December 23, 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 FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: November 5, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–27175 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–95–2013]

Notification of Proposed Production Activity, Revlon Consumer Products Corporation, Subzone 93G, (Cosmetics and Personal Care Products), Oxford, North Carolina

Revlon Consumer Products Corporation (Revlon), operator of Subzone 93G, submitted a notification of proposed production activity to the FTZ Board for its facility in Oxford, North Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on October 17, 2013.

The subzone currently has authority to produce certain cosmetics and personal care products under FTZ procedures using certain foreign inputs. The current request involves the use of additional inputs in the production of the finished products noted above. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Revlon from customs duty payments on the foreign status components used in export production. On its domestic sales, Revlon would be able to choose the duty rates during customs entry procedures that apply to perfume and bath splash, lip make-up products, eye make-up products, nail polish, face make-up powder, foundation and concealers, shampoo, hair perm or relaxer, hair spray, hair color and hair dye, and deodorant and anti-perspirant (duty rate ranges from free to 4.9%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Chamomilla recutita (matricaria) flower/leaf extract, squalane, lanolin, shea butter, propylene glycol dicaprylate, kaolin, mica, talc, isododecane, petroleum jelly, paraffin wax, silica silylate, inorganic acid, zinc oxide, titanium dioxide, bismuth oxychloride, aluminum chlorohydrate, hydrogen peroxide, boron nitride, isopropyl alcohol, stearyl alcohol, propylene glycol, butylene glycol, resorcinol, methylresorcinol, lanosterol esters, butyl ether, ethylparaben, retinyl palmitate, lauric acid, potassium sorbate, ethylene brassylate, copper gluconate, octinoxate, phenylenediamine, ethanolamine, lauroyl lysine, tetrasodium, hydrotriticum, phenyl trimethicone, erythorbic acid, lauryl pyrrolidone, caffeine, aluminum zirconium, fruit extract, sodium laureth sulfate, cosmetic wax, oligopeptide, cetearyl alcohol polysorbate, calcium aluminum borosilicate, polybutene, lauryl methacrylate, polymethylsilsesquioxane, sodium acrylate, polyamide 12, nylon 12, trimethylol hexyllactone crosspolymer, dimethicone, cellulose, agarose, polymers, PVC, methyl methacrylate, and ethylene terapthalate (duty rate ranges from free to 7.7%).

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 December 23, 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 Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: November 6, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–27167 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Membership of the Bureau of Industry and Security Performance Review Board

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of membership on the Bureau of Industry and Security's Performance Review Board Membership.

SUMMARY: In accordance with 5 U.S. C. 4314 (c) (4), the Bureau of Industry and Security (BIS), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of BIS's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for BIS's Performance Review Board begins on November 13, 2013.

FOR FURTHER INFORMATION CONTACT: Ruthie B. Stewart, Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482–3130.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Bureau of Industry and Security (BIS), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of BIS's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for BIS's Performance Review Board begins on November 13, 2013. The name, position title, and type of appointment of each member of BIS's Performance Review Board are set forth below by organization:

Department of Commerce, Bureau of Industry and Security (BIS)

Daniel O. Hill, Deputy Under Secretary, Career SES, Chairperson

Matthew S. Borman, Deputy Assistant Secretary for Export Administration, Career SES

Richard R. Majauskas, Deputy Assistant Secretary for Export Enforcement, Career SES (New Member)

Gay G. Shrum, Chief Financial Officer and Director of Administration, Career SES

Department of Commerce, Office of the General Counsel (OGC)

Brian D. DiGiacomo, Chief, Employment and Labor Law Division, Career SES (New Member)

Department of Commerce, Office of the Secretary (OS)

Frederick E. Stephens, Deputy Assistant Secretary for Administration, Office of the Chief Financial Officer and Assistant Secretary for Administration, Political Advisor (New Member)

Dated: November 6, 2013.

Debbie Pfaff,

Director, Office of Staffing, Recruitment and Classification, Department of Commerce Human Resources Operations Center.

[FR Doc. 2013–27081 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 130807689–3689–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of the Proposed Fiscal Year 2015 Annual Materials Plan

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The purpose of this notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of the proposed Fiscal Year 2015 National Defense Stockpile Annual Materials Plan. The role of the Market Impact Committee is to advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals involving the stockpile and related material research and development projects. Public comments are an important element of the Committee's market impact review process.

DATES: To be considered, written comments must be received by December 13, 2013.

ADDRESSES: Address all comments concerning this notice to Michael Vaccaro, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, 1401 Constitution Avenue NW., Room 3876, Washington, DC 20230, fax: (202) 482–5650 (Attn: Michael Vaccaro), email: *MIC@bis.doc.gov;* and Sean Ruthe, U.S. Department of State, Bureau of Energy Resources, 2201 C Street NW., Washington, DC 20520, fax: (202) 647–4037 (Attn: Sean Ruthe), or email: *ruthesw@state.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Vaccaro, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: (202) 482–8232, fax: (202) 482–5650 (Attn: Michael Vaccaro), email: *MIC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Revision Act of 1979, as amended (the Stock Piling Act) (50 U.S.C. 98, *et seq.*), the Department of Defense's Defense Logistics Agency (DLA), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 9(b)(2)(G)(ii) of the Stock Piling Act (50 U.S.C. 98(h)(b)(2)(G)(ii)) authorizes the National Defense Stockpile Manager to fund material research and development projects to develop new materials for the stockpile.

Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h-1) formally established a Market Impact Committee (the ''Committee'') to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile. . . .'' The Committee must also balance market impact concerns with the statutory requirement to protect the U.S. Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the materials stored in or of interest to the National Defense Stockpile Manager.

As the National Defense Stockpile Manager, the DLA must produce an Annual Materials Plan proposing the maximum quantity of each listed material that may be acquired, disposed of, upgraded, or sold by the DLA in a particular fiscal year. In Attachment 1, the DLA lists the quantities and type of activity (potential acquisition, potential disposal, or potential upgrade) associated with each material in its proposed FY 2015 Annual Materials Plan. The quantities listed in Attachment 1 are not acquisition, disposal, upgrade, or sales target quantities, but rather a statement of the proposed maximum quantity of each listed material that may be acquired, disposed of, upgraded, or sold in a particular fiscal year by the DLA as noted. The quantity of each material that will actually be acquired or offered for sale will depend on the market for the material at the time of the acquisition or offering, as well as on the quantity of each material approved for acquisition, disposal, or upgrade by Congress.

The Committee is seeking public comments on the potential market impact associated with the proposed FY 2015 AMP as enumerated in Attachment 1. Public comments are an important element of the Committee's market impact review process.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the quantities associated with the proposed FY 2015 AMP. All comments must be submitted to the addresses indicated in this notice. All comments submitted through email must include the phrase ''Market Impact Committee Notice of Inquiry'' in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on December 13, 2013. The Committee will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The

Committee will seek to protect such information to the extent permitted by law.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–1900 for assistance.

Dated: November 5, 2013.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

Attachment 1

PROPOSED FISCAL YEAR 2015 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
Sales/Upgrades/Disposals			
Beryllium Metal	ST	17.5	(1 2)
Chromium, Ferro	ST	23,500	(2)
Chromium, Metal	ST	150	(2)
Manganese, Ferro	ST	50,000	(2)
Manganese, Metallurgical Grade	SDT	100,000	(2)
Talc	ST	1,639	(3)
Tin	MT	804	(1)
Tungsten Metal Powder	LB W	77,433	(2)
Tungsten Ores and Concentrates	LB W	3,000,000	(2)
Acquisitions			
CZT (Cadmium Zinc Tellurium substrates)	cm^2	40,000	
TATB (Triamino-Trinitrobenzene)	LB	16,000	
Lithium Cobalt Oxide (LCO)	Kg	150	
Lithium Nickel Cobalt Aluminum Oxide (LNCAO)	Kg	540	
Mesocarbon Microbeads (MCMB)	Kg	648	
Ferroniobium	MT	104.5	
Dysprosium Metal	MT	0.5	
Yttrium Oxide	MT	10	

[1] Potential Upgrade.
[2] Potential Disposal.
[3] Potential Disposal (Landfill).

[FR Doc. 2013–27154 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Changes to the Membership of the Performance Review Board

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Performance Review Board Membership.

SUMMARY: The regulations at 5 CFR 430.310 require agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. In accordance with those regulations, this notice announces changes to the membership of the International Trade Administration's Performance Review Board.

DATES: *Effective Date:* The changes made to the Performance Review Board are effective September 20, 2013.

FOR FURTHER INFORMATION CONTACT: Ruthie B. Stewart, U.S. Department of Commerce, Office of Human Resources Management (OHRM), Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482–3130.

SUPPLEMENTARY INFORMATION: The International Trade Administration (ITA) published its list of Performance Review Board appointees pursuant to the regulations at 5 CFR 430.310 (74 FR 51261). The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank Awards for members of the Senior Executive Service. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

ITA publishes this notice to announce changes to the Performance Review Board's membership. The name, position title, and type of appointment of each member of ITA's Performance Review Board are set forth below by organization:

Department of Commerce, International Trade Administration (ITA)

John M. Andersen, Deputy Assistant Secretary for Market Access and Compliance, Career SES, serves as Chairperson

Kenneth Berman, Deputy Chief Information Officer, Career SES, new member

Kimberly Thompson Glas, Deputy Assistant Secretary for Textiles and Apparel, Non-Career SES, Political Advisor, new member

Carole Ann Showers, Director, Office of Policy, career, new member

Holly K. Vineyard, Deputy Assistant Secretary for Africa, the Middle East, and South Asia, Career SES, new member

Department of Commerce, Office of the Secretary (OS)

Lisa A. Casias, Director for Financial Management and Deputy Chief Financial Officer, Career SES, new member

Dated: November 6, 2013.

Debbie Pfaff,

Director, Office of Staffing, Recruitment and Classification, Department of Commerce Human Resources Operations Center.

[FR Doc. 2013–27078 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Healthcare Education Mission to New Delhi, Hyderabad, and Ahmedabad, India, January 27–February 1, 2014

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Amendment.

SUMMARY: The United States Department of Commerce, International Trade Administration is amending the Notice published at 78 FR 42505, July 16, 2013, regarding the U.S. Healthcare Education Mission to New Delhi, Hyderabad, and Ahmedabad, India to revise the contact.

SUPPLEMENTARY INFORMATION: There is now a new mission contact.

Amendments

For the reasons stated above, the Contact Information section of the Notice of the U.S. Healthcare Education Mission to New Delhi, Hyderabad, and Ahmedabad, India, January 27–February 1, 2014 is amended as follows: U.S. Export Assistance Center Milwaukee: Koreen M. Grube, International Trade Specialist; U.S. Department of Commerce, International Trade Administration; Tel: 414–297–1853; *Koreen.Grube@trade.gov*.

Contact Information

U.S. Commercial Service in India: Sathya Prabha, Commercial Assistant, Hyderabad, Tel: (91–40) 2330 4025, *Email: Sathya.Prabha@trade.gov*.

U.S. Export Assistance Center Milwaukee: Koreen M. Grube International Trade Specialist, U.S. Department of Commerce International Trade Administration, Tel: 414–297–1853, *Koreen.Grube@trade.gov*.

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2013–27076 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No: 130508459–3922–02]

Possible Models for the Administration and Support of Discipline-Specific Guidance Groups for Forensic Science

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce.

ACTION: Notice, extension of comment period.

SUMMARY: NIST is extending the deadline for submitting comments relating to Possible Models for the Administration and Support of Discipline-Specific Guidance Groups for Forensic Science. Due to the lack of availability of information posted on the NIST Web site, and the lack of NIST staff to respond to questions during the recent government shutdown due to a lapse in appropriations, the public may not have been able to formulate or submit their input. To allow the public sufficient time to formulate and submit their comments, NIST is extending the comment period from 11:59 p.m. Eastern Time, November 12, 2013 to 11:59 p.m. Eastern Time on November 26, 2013.

DATES: Comments must be received no later than 11:59 p.m. Eastern Time, November 26, 2013.

ADDRESSES: Written comments may be submitted by mail to the National Institute of Standards and Technology, c/o Susan Ballou, 100 Bureau Drive, Mailstop 8102, Gaithersburg, MD 20899. Electronic comments may be sent to *susan.ballou@nist.gov.* Electronic submissions may be in any of the following formats: HTML, ASCII, Word, rtf, or PDF. All email messages and comments received are a part of the public record and will be made available to the public generally without change on the NIST Law Enforcement Standards Office Web site; *www.nist.gov/oles/forensics/.* For this reason, comments should not include confidential, proprietary, or business sensitive information.

FOR FURTHER INFORMATION CONTACT: For questions about this Notice contact: Susan Ballou, Office of Special Programs, National Institute of Standards and Technology, 100 Bureau Drive, Mailstop 8102, Gaithersburg, MD 20899, telephone (301) 975–8750; email *susan.ballou@nist.gov.* Please direct media inquiries to the NIST's Office of Public Affairs, Media Liaison, Ms. Jennifer Huergo, utilizing the email address: *Jennifer.huergo@nist.gov.*

SUPPLEMENTARY INFORMATION: On September 27, 2013, the National Institute of Standards and Technology (NIST) announced that it was soliciting input for possible models for the administration and support of discipline-specific guidance groups for Forensic Science (78 FR 59654). That Notice of Inquiry may be found at *https://www.federalregister.gov/articles/2013/09/27/2013-23617.* Due to the lack of availability of information posted on the NIST Web site, and the lack of NIST staff to respond to questions during the recent government shutdown due to a lapse in appropriations, the public may not have been able to formulate or submit their input. To allow the public sufficient time to formulate and submit their comments, NIST is extending the comment period from 11:59 p.m. Eastern Time, November 12, 2013, to 11:59 p.m. Eastern Time on November 26, 2013.

Dated: November 5, 2013.

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2013–27156 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 131023883–3883–01]

Draft Guidance on Intellectual Property Rights for the National Network for Manufacturing Innovation and Draft Institute Performance Metrics for the National Network for Manufacturing Innovation

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The Advanced Manufacturing National Program Office (AMNPO), hosted by the National Institute of Standards and Technology (NIST), announces the release for public comment of two AMNPO draft documents entitled *Draft Guidance on Intellectual Property Rights for the National Network for Manufacturing Innovation* and *Draft Institute Performance Metrics for the National Network for Manufacturing Innovation.* The first document describes draft guidance pertaining to intellectual property (IP) management, and the second document describes draft institute performance metrics, for the proposed National Network for Manufacturing Innovation (NNMI) and the individual manufacturing innovation institutes that compose the network. These two documents were produced by the federal interagency AMNPO, hosted by NIST. The AMNPO seeks public comments on the two documents. All comments received will be made publicly available.

DATES: Comments must be received by 11:59 p.m. Eastern Time December 13, 2013.

ADDRESSES: Comments on each document should be provided separately. Comments should be sent to *amnpo@nist.gov* with the Subject, ''NNMI DRAFT IP'' or ''NNMI DRAFT Metrics.'' Comments will only be accepted by email.

The AMNPO draft documents are available on the web at the addresses shown below:

• *Draft Guidance on Intellectual Property Rights for the National Network for Manufacturing Innovation* at: *http://www.manufacturing.gov/docs/nnmi_draft_ip.pdf*, and

• *Draft Institute Performance Metrics for the National Network for Manufacturing Innovation* at: *http://www.manufacturing.gov/docs/nnmi_draft_metrics.pdf.*

An electronic version of the Comment Form that is to be used to provide comment for either report is available on the web at: *http://www.manufacturing.gov/docs/comment_matrix.pdf.* The Web site for the AMNPO is *http://www.manufacturing.gov/welcome.html.*

FOR FURTHER INFORMATION CONTACT: For further information about this announcement, contact Frank Gayle, Advanced Manufacturing National Program Office, National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Mailstop 4040, Gaithersburg, MD 20899, telephone (301) 975–8280; email *amnpo@nist.gov.* Please direct media inquiries to Mark Bello, NIST Office of Public Affairs, telephone (301) 975–3776; email *mark.bello@nist.gov.*

SUPPLEMENTARY INFORMATION: The President's manufacturing agenda includes his vision for an NNMI, first announced on March 9, 2012.[1] The NNMI focuses on strengthening and ensuring the long-term competitiveness and job-creating power of U.S. manufacturing by creating a network of individual manufacturing innovation institutes. Each institute would serve as a regional hub designed to bridge the gap between basic research and product development, bringing together companies, universities and community colleges, and Federal agencies to co-invest in technology areas that encourage investment and production in the U.S. This type of innovation infrastructure provides a unique ''teaching factory'' that allows for education and training of students and workers at all levels, while providing the shared assets to help companies, most importantly small and medium-sized manufacturers, access the cutting-edge capabilities and equipment to design, test, and pilot new products and manufacturing processes.

Each institute will serve as a regional hub of manufacturing excellence, providing the innovation infrastructure to support regional manufacturing and ensuring that our manufacturing sector is a key pillar in an economy that is built to last. Each institute also will have a well-defined focus to address industrially relevant manufacturing challenges on a large scale and to provide the capabilities and facilities required to reduce the cost and risk of commercializing new technologies.

On December 15, 2011, Commerce Secretary John Bryson announced the establishment of a national program office within the Department of Commerce to coordinate and help implement the President's advanced manufacturing partnership.[2] The AMNPO, hosted by NIST, is charged with convening and enabling industry-led, private-public partnerships focused on manufacturing innovation, engaging U.S. universities, and designing and implementing an integrated national advanced manufacturing initiative to facilitate collaboration and information-sharing across Federal agencies. AMNPO partner agencies include Department of Commerce's NIST, Department of Defense, Department of Education, Department of Energy's Advanced Manufacturing Office, Department of Labor, National Aeronautics and Space Administration (NASA), and National Science Foundation.

On May 4, 2012, the AMNPO issued a Request for Information (RFI), seeking public comment on specific questions related to the structure and operations of the NNMI and the individual Institutes for Manufacturing Innovation. The RFI was published in the **Federal Register** (77 FR 26509) and may be found at: *http://www.gpo.gov/fdsys/pkg/FR-2012-05-04/pdf/2012-10809.pdf.* Comments in response to the RFI were due on or before 11:59 p.m. Eastern time on October 25, 2012. All comments received in response to the RFI are available online at *http://www.manufacturing.gov/rfi_responses.html.* In August of 2013, NISTIR G2013–1050, entitled *Request for Information: Response Summary for the National Network for Manufacturing Innovation,* was published and is available at: *http://www.manufacturing.gov/docs/RFI_summary.pdf.*

The AMNPO also held four NNMI workshops as part of its strategy for soliciting nation-wide input on building the NNMI in conjunction with the published RFI. The first workshop was held on April 25, 2012, at Rensselaer Polytechnic Institute in Troy, New York, the second on July 9, 2012, at Cuyahoga Community College in Cleveland, Ohio, the third on September 27, 2012, at the Arnold and Mabel Beckman Center of the National Academies of Sciences and Engineering in Irvine, California, and the fourth on October 18, 2012, at the Millennium Harvest House in Boulder, Colorado. A final workshop was held on January 16, 2013, at the U.S. Space and Rocket Center, Davidson Center for Space Exploration, Huntsville, Alabama, after the conclusion of the RFI solicitation period, and included review of the comments received. Summary reports for all five workshops are available on the web at: *http://www.manufacturing.gov/pubs_resources.html.*

As part of his *We Can't Wait* efforts, President Obama announced in March of 2012, that immediate steps would be taken to launch a pilot institute to serve as a proof-of concept demonstration for the NNMI Institutes.[3] A collaborative inter-agency team of technical experts led by the Department of Defense, in partnership with the Department of Energy, NASA, National Science Foundation, and the Department of Commerce's National Institute of Standards and Technology, determined that Additive Manufacturing showed great promise for the defense, energy, space and commercial sectors of the Nation. In August, 2012, the selection of the National Additive Manufacturing Innovation Institute (NAMII), a partnership that includes manufacturing firms, universities, community colleges, and nonprofit organizations from the Ohio-Pennsylvania-West Virginia ''Tech Belt,'' was announced.[4]

On January 16, 2013, the National Science and Technology Council (NSTC) released a report based on the input of nearly 900 stakeholders that describes an approach for implementing and managing the proposed NNMI. The development of the report, *National Network for Manufacturing Innovation: A Preliminary Design,* was informed by

[1] President Obama to Announce New Efforts to Support Manufacturing Innovation, Encourage Insourcing; *http://www.whitehouse.gov/the-press-office/2012/03/09/president-obama-announce-new-efforts-support-manufacturing-innovation-en.*

[2] *http://www.commerce.gov/news/press-releases/2011/12/16/commerce-secretary-john-bryson-lays-out-vision-department-commerce.*

[3] *http://www.whitehouse.gov/the-press-office/2012/03/09/president-obama-announce-new-efforts-support-manufacturing-innovation-en.*

[4] *http://www.commerce.gov/news/press-releases/2012/08/16/obama-administration-announces-new-public-private-partnership-support.*

public comment received.[5] Most recently, on May 9, 2013, the President announced competitions to create three new manufacturing innovation institutes, and the Administration continues to call on Congress to act on the President's proposal and FY 2014 Budget that includes a one-time $1 billion investment at the Department of Commerce to create the NNMI.[6]

Request for Comments: The AMNPO requests public comments from all interested parties on two AMNPO draft documents, entitled *Draft Guidance on Intellectual Property Rights for the National Network for Manufacturing Innovation* and *Draft Institute Performance Metrics for the National Network for Manufacturing Innovation.* These documents address topics identified by stakeholders, as high priorities for the NNMI identified in the RFI and in the four NNMI workshops. Documents related to additional high priority NNMI matters may be issued in this manner in the future. Public comments must be submitted by email, using the template that can be found at *http://www.manufacturing.gov/docs/comment_matrix.pdf*, to the address given above in the **ADDRESSES** section of this notice. Comments on each document should be provided separately using the template referenced within the **ADDRESSES** section of this notice. All comments will be made publicly available without redaction, so the public should not include personal or proprietary information in comments. See the **FOR FURTHER INFORMATION CONTACT** section of this notice should problems be encountered submitting comments.

Dated: November 6, 2013.

Phillip Singerman,

Associate Director for Innovation and Industry Services.

[FR Doc. 2013–27157 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–13–P

[5] *http://manufacturing.gov/docs/NNMI_prelim_design.pdf.*

[6] *http://www.whitehouse.gov/the-press-office/2013/05/09/obama-administration-launches-competition-three-new-manufacturing-innova.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 1206013325–3912–03]

RIN 0648–XA983

Endangered and Threatened Wildlife; Notice of 12-Month Finding on a Petition To List the Sperm Whale (*Physeter macrocephalus*) as an Endangered or Threatened Distinct Population Segment (DPS) in the Gulf of Mexico

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

ACTION: Status review; notice of finding.

SUMMARY: We, NMFS, announce a 12-month finding on a petition to list the sperm whale (*Physeter macrocephalus*) in the Gulf of Mexico as an endangered or threatened distinct population segment (DPS) under the Endangered Species Act of 1973 as amended (ESA). We conducted a review of the status of this population, as described below. Based on the best available scientific and commercial information, we find that the petitioned action is not warranted.

DATES: The finding announced in this notice was made on November 13, 2013.

ADDRESSES: Information used to make this finding is available for public inspection by appointment during normal business hours at NMFS Headquarters, Protected Resources Office, 1315 East-West Highway, Silver Spring, MD 20910. This file includes the information provided by the public and scientific and commercial information gathered for the status review. The petition and a list of the references we used can also be found at *http://www.nmfs.noaa.gov/pr/.htm.*

FOR FURTHER INFORMATION CONTACT: Marta Nammack, NMFS, Office of Protected Resources, (301) 427–8469.

SUPPLEMENTARY INFORMATION: On December 9, 2011, we received a petition from WildEarth Guardians to list the sperm whale (*Physeter macrocephalus*) population in the Gulf of Mexico as an endangered or threatened Distinct Population Segment (DPS) under the Endangered Species Act (ESA); sperm whales are currently listed as a single endangered species throughout their global range (35 FR 8495; June 2, 1970). The petitioner also requested designation of critical habitat concurrent with the listing.

After reviewing the petition, the literature cited in the petition, and other literature and information available in our files, we found that the petition met the requirements of the regulations under 50 CFR 424.14(b)(2) and determined that the petition presented substantial information indicating that the petitioned action may be warranted (78 FR 19176; March 29, 2013). At that time, we commenced a status review of the sperm whale in the Gulf of Mexico and solicited information pertaining to the population. Section 4(b)(3)(B) of the ESA requires that when a petition to revise the List of Endangered and Threatened Wildlife and Plants is found to present substantial scientific and commercial information, we make a finding on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from listing by other pending proposals of higher priority. This finding is to be made within 12 months of the date the petition was received, and the finding is to be published promptly in the **Federal Register**.

There are two key tasks associated with conducting an ESA status review. The first is to determine whether the petitioned entity qualifies as one or more species under the ESA. The ESA defines the term ''species'' to include ''any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' If the petitioned entity qualifies as a species, the second task is to conduct an extinction risk assessment to determine whether the species is threatened or endangered. The ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.'' Thus, we interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

Species Background

The sperm whale (Linnaeus, 1758) is listed as an endangered species under the ESA. It was first listed under the precursor to the ESA, the Endangered Species Conservation Act of 1969, and remained on the list of threatened and

endangered species after the passage of the ESA in 1973 (35 FR 18319; December 2, 1970). Whaling was the main reason for listing the sperm whale. Commercial whaling for this species ended in 1988 with the implementation of a moratorium against whaling by the International Whaling Commission (IWC). While whaling was eliminated by the IWC whaling moratorium, several potential threats remain, as discussed in the sperm whale recovery plan (NMFS, 2010a). Sperm whales are deep and prolonged divers and use the entire water column, even in very deep areas. Most sperm whales are found in very deep waters (>3,000 m), but they generally feed between 500–1,000 m where most of their prey is found. Sperm whales feed primarily on large- and medium-sized squid, but the list of documented food items is fairly long and diverse, including other cephalopods and medium-and large-sized demersal fish, such as rays, sharks, and many teleosts (Berzin, 1972; Clarke 1977, 1980; Rice, 1989). The diet of large males in some areas, especially in high northern latitudes, is dominated by fish (Rice, 1989). Lockyer (1981) estimated sperm whales consumed about 3.0–3.5 percent of their body weight per day.

Sperm whales are perhaps the most widely distributed mammal species on Earth. The social organization of most mammals is characterized by female philopatry and male dispersal. Groups of females and juveniles are found mainly at low latitudes, while males reach polar waters, returning to tropical and subtropical waters to breed. Sperm whales are organized in groups in which females (some related to each other and some not) travel with their sub-adult offspring. Mature female and immature sperm whales of both sexes are found in more temperate and tropical waters from the equator to around 45°N throughout the year. Adult males will move extensively, even to polar waters, and then return to tropical and subtropical waters.

Sperm whales mature slowly and can live to ages in excess of 60 years (Rice, 1989). Females usually begin ovulating at 7–13 years of age and usually conceive at about age 9 (Rice, 1989). Maturation in males usually begins in this same age interval, but most individuals do not become fully mature until their twenties. In the North Atlantic Ocean, the peak breeding season for sperm whales occurs during the spring (March/April to June), although some mating activity occurs December to August. In the South Atlantic the peak breeding season is presumed to occur in the austral spring. During mating seasons, prime bulls in their late twenties and older rove among groups of females. Because females within a group often come into estrus synchronously, the males need not remain with the females for the breeding season to achieve maximal breeding success (Best and Butterworth, 1980) and their association with a group can be as brief as several hours. Gestation lasts well over a year, with credible estimates of the normal duration ranging from 15 months to more than a year and a half. Lactation lasts at least 2 years, and the inter-birth-interval is 4–6 years (Best *et al.,* 1984) for prime-aged females. Female sperm whales rarely become pregnant after the age of 40 (Whitehead, 2003). Two particular aspects of the sperm whale's reproductive biology are relevant to recovery. First, the maximal rate of increase in reproduction is very low, perhaps no more than one or two percent per year. Second, selective killing of large males by modern whaling could have had the residual effect of reducing reproductive rates (Whitehead *et al.,* 1997).

Status Review

Our 90-day finding accepting the petition solicited information from the public and initiated a status review of the sperm whale in the Gulf of Mexico (GOM) to gather any additional information to inform our review of the petitioned action and our application of the DPS policy. We reviewed the best available information, and we conducted a DPS analysis to determine whether the GOM population of the sperm whale qualifies as a DPS under the ESA. Here we review the best available information on physical, physiological, ecological, and behavioral factors to determine whether the GOM population is discrete.

Are sperm whales in the Gulf of Mexico discrete from other sperm whale populations?

The ESA provides for listing species, subspecies, or DPSs of vertebrate species. When we evaluate a petition to list an entity as threatened or endangered under the ESA, we must first determine whether the petitioned entity qualifies as a species under the ESA. This petition argues that the Gulf of Mexico sperm whale population meets the requirements for being identified as a DPS and requests we list sperm whales in the Gulf of Mexico as a threatened or endangered DPS.

Our joint NMFS–U.S. Fish and Wildlife Service (USFWS) Policy on Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (DPS policy) (61 FR 4722; February 7, 1996) identifies two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the species to which it belongs. A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. If a population segment is considered discrete by one or more of the above conditions, its biological and ecological significance will then be considered in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPSs be used ''. . . sparingly'' while encouraging the conservation of genetic diversity. The DPS policy directs us to consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

DPS Analysis

To determine if the sperm whale in the GOM meets the DPS criteria, we evaluate the best available information to determine whether sperm whales in the Gulf of Mexico are markedly separated as a consequence of physical, physiological, ecological, or behavioral factors from other populations of the sperm whale.

Genetics—An examination of the best available genetic information reveals that, although there is strong mtDNA evidence of population structuring indicating differences between the GOM population and sperm whales in the northwest Atlantic, this is not coupled with nDNA evidence that would indicate that males from the GOM are genetically different from males in the northwest Atlantic. Physically mature male sperm whales typically range over huge distances on their own (Best, 1979; Rice, 1989; Whitehead, 1993; Whitehead and Weilgart, 2000; Teloni *et al.,* 2008). In contrast to females, males disperse from their natal units at a mean estimated age of 6 years, when they migrate slowly into higher latitudes prior to attaining sexual maturity at 18–21 years (Whitehead and Weilgart, 2000). This is reflected in high variability and a lack of geographical structure in nDNA relative to mtDNA (Lyrholm *et al.,* 1999).

There are statistically significant patterns of mtDNA differentiation between oceans (Engelhaupt, 2004; SWSS, 2008; Engelhaupt *et al.,* 2009; NMFS, 2010a); however, studies examining nDNA reveal either no significant (Lyrholm *et al.,* 1999) or low (Bond, 1999) degrees of population structuring between oceans. Engelhaupt *et al.* (2009) suggest that the discrepancy between mtDNA and nDNA differentiation may reflect sex biased dispersal, and male mediated gene flow may connect geographically isolated regions on an oceanic scale. Their analysis of nDNA showed no significant difference between whales sampled in the GOM and those from other areas of the North Atlantic, indicating that mature males move in and out of the GOM. The results of the Engelhaupt *et al.* (2009) study indicate that population structuring is different for mtDNA compared with population structuring for nDNA.

At best, mtDNA evidence suggests that females are philopatric; however, mtDNA does not alone describe population structure. Because mtDNA is maternally inherited, differences in mtDNA haplotypes between populations do not necessarily mean that the populations are substantially reproductively isolated from each other because they do not provide any information on males. Due to the wide ranging nature of mature male sperm whales, males from one population may breed with females from other populations. We have indicated in other status reviews that mtDNA data may indicate that populations are discrete, but in species where female and male movement patterns differ, nDNA data may indicate that the populations are homogeneous (*see* e.g., loggerhead sea turtle, 68 FR 53947, September 15, 2003 at 53950–51 and Conant *et al.,* 2009, at 18, 22, 25–28; southern resident killer whale, Krahn *et al.,* 2002, at 23–30). As noted in SWSS (2008), a male sperm whale tagged in 2002 moved into the North Atlantic for more than 2 months, providing the first evidence that the GOM population may not be a stock isolated from the North Atlantic (SWSS, 2008; Waring *et al.,* 2012). Its return to the GOM included an extended stay off the northwest Cuban coast, and it summered in two different regions of the upper GOM and visited the Gulf of Campeche twice (SWSS, 2008). While some may view this as support for separate stocks in the GOM and the North Atlantic, SWSS (2008) notes that few males were sampled in the GOM. Because the tags were deployed from June to early August, more individuals were tracked during the summer months (SWSS, 2008). Therefore, it is likely that mature males were not in the GOM at this time, as they spend most of their time in colder waters at high latitudes and only visit tropical waters to reproduce (Best 1979; Whitehead and Arnbom 1987; Whitehead 2003, as cited in SWSS (2008)).

The fact that males move in and out of the GOM and interbreed with females from other populations when mature, as evidenced by the homogeneity of the nDNA, indicates that the GOM population is not markedly separated from other populations in the Atlantic Ocean. Engelhaupt *et al.* (2009) demonstrate that a single, undivided genetic population of sperm whales is found from the GOM to at least northern Europe. As we have summarized here, the best available genetic information indicates that sperm whales in the GOM are not discrete from other sperm whale populations.

Vocalization—We next examined information on codas. Sperm whale social structure is complex, with females, calves, and immature animals of both sexes living in relatively stable social ''units'' containing on average 11–12 animals that persist for decades (Rendell and Whitehead, 2004). These sperm whale social groups communicate via codas: Repeated stereotyped sequences of 3–40 broadband (0–16 kHz) clicks generally heard during periods of socializing (Watkins and Schevill, 1977). Codas are shared among individuals of a social unit and are considered to be primarily for intra-group communication (Weilgart and Whitehead, 1997; Rendell and Whitehead, 2004). These distinctive, short, patterned series of clicks are associated with social behavior and interactions within social groups (Weilgart and Whitehead, 1993).

Significant differences in vocalization or coda repertoire exist amongst smaller social groups or ''units'' of sperm whales, and this variation amongst social units or groups is commonplace for sperm whales (Weilgart and Whitehead, 1997; Rendell and Whitehead, 2004). Differences in vocalization are culturally transmitted by the matrilineal line, and there is a difference between geographical sperm whale variation in codas (macrogeographic) and coda ''dialects'' (microgeographic) (Mundinger, 1982). In a study of sperm whales in the southern Pacific Ocean, Weilgart and Whitehead (1997) found that the sperm whale groups they encountered had distinctive dialects in coda usage based on analyses of interclick intervals (ICIs), the time intervals between clicks in a coda, standardized to total coda length. The group-specific dialects that are found in sperm whales have even been deemed as similar to those which occur in killer whale ''vocal clans'' (Weilgart and Whitehead, 1997; Rendell and Whitehead, 2003).

Codas and mtDNA have been linked; a study of six sperm whale groups revealed a clear link between mtDNA and coda repertoire as groups with similar mtDNA tended to have similar coda usage dialects (Whitehead *et al.,* 1998). These results indicate codas are transmitted across generations matrilineally. Whitehead *et al.* (1998) suggested vertical cultural transmission (offspring learn codas from their mothers) as the best explanation for this pattern. This may reflect the mtDNA information presented above suggesting population structure, without consideration of the nDNA. The sperm whale seismic study (SWSS, 2008) cited in the petition found variation in vocalization between the north central GOM and the northwest GOM. Because there is evidence of different types of coda variation (i.e., macrogeographic versus microgeographic dialects) within the GOM, communication is passed down from the mother, and adult male sperm whales travel outside the Gulf of Mexico, the communication difference between GOM sperm whales and sperm whales from other populations does not indicate sperm whales in the GOM are ''markedly'' separate.

Group size—While group size in the GOM is smaller on average than in other oceans, group size is variable throughout their global range. The fact that group sizes are similar to those in the Caribbean and smaller than group sizes in some other oceans (SWSS,

2008) does not show a ''marked'' separation from other sperm whale group sizes. Christal *et al.* (1998) note that estimated social unit size in the Galapagos, for example, ranged from 3 to 24 individuals and presented evidence of splitting and merging of units and of transfer of individuals between units. The considerable variation in unit size (perhaps caused by demographic processes) suggests that the benefits of remaining in a social unit usually outweigh selection for some optimal unit size (Christal *et al.,* 1998). Richter *et al.* (2008) note that it could be argued that differences in ecological conditions in which various sperm whale populations live are reflected in the parameters of their social behavior, such as group size and association rate (Richter *et al.,* 2008). The best available evidence does not indicate that sperm whale group size in the GOM is different from all other populations of the sperm whale.

Whale size—Mean size of sperm whales in the GOM (8.5 m) has been reported to be smaller than that of other sperm whale populations (e.g., 10 m for the Gulf of California population) (SWSS, 2008). While photographic data on known males and sound pulse studies showed that those measured in the GOM were smaller than breeding males elsewhere (Jaquet *et al.,* 2006; Antunes *et al.,* 2006), no mature males have been observed in the GOM. This only confirms that younger male whales that have recently departed from their mothers are smaller than those at full maturity, which is not noteworthy. Older males, which apparently only pass through the GOM for breeding, are larger than the younger males that have not yet migrated out of the GOM. Further, whale size data from these studies have never been normalized to account for age, so a reliable comparison cannot be made. Finally, Jochens *et al.* (2008) argue that female/adolescent size differences among sperm whale populations may be the result of nothing more than differences in prey, suggesting that ''it is possible that the population studied is smaller because smaller animals may prefer the shallower waters relative to their diving ability and/or availability of suitable prey.'' Whales may assort themselves by water depths to match their body sizes. Finally, even if GOM whales are a little smaller on average than other populations of sperm whale, such a modest difference is not sufficient to demonstrate that the GOM population is ''markedly separated'' from other sperm whale populations.

International boundaries—In examining whether a population is discrete based on international governmental boundaries, we are to examine differences in the control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. Section 4(a)(1)(D), the inadequacy of existing regulatory mechanisms, is one of the five factors we must evaluate to determine whether to list a species. We did not find any information pointing to significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms between the population of sperm whales in the GOM and any other particular population of the sperm whale such that the population of the sperm whale in the GOM could be considered discrete from a sperm whale population outside of the GOM. The ESA extends prohibitions against take of endangered species by any person subject to the jurisdiction of the United States within the United States, its territorial waters, or on the high seas. While the ESA may provide less protection to species under the jurisdiction of other countries, these differences in ESA protections apply for any sperm whale population that spends time in waters of the United States, including sperm whales within the GOM because Mexican waters are also outside of U.S. jurisdiction. Therefore, we cannot rely on differences in ESA protections for sperm whales within the GOM and outside of the GOM as support for the discreteness criterion of the DPS policy.

With regard to other regulatory mechanisms, the United States and Mexico are both parties to the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the sperm whale is listed on Cites Appendix I, which means, aside from exceptional circumstances, commercial trade of products of sperm whales across international borders of member countries is prohibited. However, many other countries within the range of the sperm whale are parties to CITES and, therefore, are subject to the same prohibitions. The United States and Mexico are also members of the International Whaling Commission (IWC) and have therefore adopted the IWC's General Principles for Whalewatching, which include: Managing the development of whalewatching to minimize the risk of adverse impacts; designing, maintaining, and operating platforms to minimize the risk of adverse impacts on cetaceans, including disturbance from noise; and allowing the cetaceans to control the nature and duration of interactions. But again, many other countries are members of the IWC, too. We find that regulatory mechanisms with respect to sperm whales in the GOM do not differ significantly from regulatory mechanisms with respect to other sperm whale populations. Therefore, we find that the GOM population is not discrete from other populations of the sperm whale based on differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms.

Relation between ''stock'' and DPS—NMFS has identified the Northern Gulf of Mexico sperm whale population as a stock for purposes of the Marine Mammal Protection Act (MMPA) *http://www.nmfs.noaa.gov/pr/pdfs/sars/ao2012whsp-gmxn.pdf* (Waring *et al.* (2012)). However, a stock under the MMPA is not equivalent to a DPS under the ESA. Under the MMPA, a ''population stock'' or ''stock'' is ''a group of marine mammals of the same species or smaller taxa in a common spatial arrangement that interbreed when mature'' (16 U.S.C. 1362(11)). The term ''stock'' is interpreted consistent with Congressional findings and policy: ''. . . the primary objective of their management [of stocks] should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the carrying capacity of the habitat.'' 16. U.S.C. 1361(5). The guidelines for preparing stock assessment reports under the MMPA include guidelines for identifying stocks, and they note that ideally, a stock would be a management unit that identifies a demographically isolated biological population (NMFS, 2005). Demographic isolation means that the population dynamics of the affected group are more a consequence of births and deaths within the group (internal dynamics) rather than immigration or emigration (external dynamics) (NMFS, 2005, *http://www.nmfs.noaa.gov/pr/pdfs/sars/gamms2005.pdf*). A major goal of identifying stocks under the guidelines is to avoid potential for localized depletion where marine mammals are subject to human-caused mortality and serious injury.

As described above, our joint USFWS–NMFS DPS policy contains different criteria for identifying a population as a DPS. The ESA's purpose of providing for the conservation of species and the ecosystems upon which they depend, along with the Congressional direction to use the

provision sparingly, guided the development of the DPS policy. The DPS policy requires that a population be both discrete from other populations and significant to the taxon to which it belongs. While in most circumstances we evaluate some or all of the same evidence in determining whether a population of marine mammals should be considered a stock under the MMPA or a DPS for purposes of the ESA, demographic independence alone does not suffice to establish a DPS. Therefore, the fact that the GOM population is considered a stock under the MMPA does not qualify the population as a DPS under the ESA.

In the 2006 NMFS Workshop on Conservation Units of Managed Fish, Threatened or Endangered Species, and Marine Mammals (NOAA Tech Memo NMFS–OPR–37, 2008), NMFS elaborated on the distinctions:

''Conservation units under the ESA should be substantially reproductively isolated from one another to be listed under this act. On the other hand, objectives of the MMPA include keeping populations or stocks of animals above their Optimum Sustainable Populations OSP levels. The Magnuson-Stevens Act (MSA) allows for management units that may contain multiple species as members of a complex, but the concept of demographically independent stocks within a species is commonly used to determine the status of fishery resources. Thus, demographic independence is an appropriate basis for identifying conservation units (distinguishing among populations or stocks) for the MSA and MMPA.''

''A low amount of exchange among groups for breeding may be sufficient to prevent development of important genetic differences; however, these groups may remain demographically independent from one another. Therefore, it is generally expected that conservation units identified on the basis of reproductive isolation would be larger than those identified on the basis of demographic independence. Thus, discrete groups under the DPS policy would generally be larger than discrete groups identified for management under the MSA or MMPA. Furthermore, marine mammal biology includes internal fertilization, live birth, parental care, and maintenance of family groups; these features act as barriers to mixing among groups and help produce fine-scale population structure.''

While Waring *et al.* (2012) note that results of multi-disciplinary research conducted in the GOM since 2000 confirm speculation by Schmidly (1981) and indicate that GOM sperm whales constitute a stock that is distinct from other Atlantic Ocean stocks(s) (Mullin *et al.* 2003; Jaquet 2006; Jochens *et al.* 2008), it is important to note that Waring *et al.* (2012) is a stock assessment conducted under the MMPA. A conclusion that northern GOM sperm whales constitute a stock under the MMPA does not demonstrate that the GOM population of sperm whales is a DPS.

Recovery Plan and DPSs—Our Recovery Plan (NMFS, 2010a) and 5-year review of the sperm whale (NMFS, 2009) recognize that there may be potential sperm whale DPSs, but they also state that further information is needed to determine a global DPS structure. Further, the Recovery Plan did not use the criteria in the DPS policy when making its assertion. Neither document concluded that at this time sufficient evidence exists to identify any population as a DPS under the ESA. Further information to support this is not available.

DPS Analysis—Discreteness Conclusion

To summarize, the best available information on genetics, size, behavior, and regulatory mechanisms does not indicate the sperm whales in the GOM are discrete from other populations of the sperm whale. The weight of the evidence does not indicate the GOM population of the sperm whale is ''markedly separated'' from other populations. While mtDNA analysis indicates some population structuring, nDNA analysis indicates that successful reproductive-mixing is occurring and that the GOM sperm whales are not reproductively isolated. Average size of the individuals and number in a group may differ throughout the range, but this does not indicate ''marked'' differences between sperm whales in the GOM and sperm whales in other geographic areas. With regard to behavioral differences, there is evidence that sperm whales in the GOM may use different codas for communication, but this differentiation is also seen within and between smaller social groups. We found that regulatory mechanisms with regard to sperm whales in the GOM do not differ significantly from those with regard to sperm whales in other areas. We believe the best available scientific and commercial information does not show that GOM sperm whales are ''markedly'' separated from other sperm whales as a consequence of physical, physiological, ecological, or behavioral factors.

Conclusion Regarding DPS

On the basis of the best available information, as described above, we conclude the GOM population is not discrete from other sperm whale populations and therefore does not meet the DPS criteria. Because the GOM sperm whales are not discrete from other sperm whale populations, we do not need to determine whether the GOM population of the sperm whale is significant to the global taxon of sperm whale, per the DPS policy. In any event, even if the GOM population of the sperm whale qualified as a discrete population, it does not meet the significance criterion of the DPS policy. It does not persist in an ecological setting unusual or unique for the taxon, as there are other areas within the range of the sperm whale with similar features to the GOM (e.g., Mediterranean Sea, which is another semi-enclosed, partially land-locked, intercontinental, marginal sea (*www.gulfmex.org/about-the-gulf/gulf-of-mexico-facts/*).

Loss of the GOM population would not result in a significant gap in the range of the sperm whale, as the range of the GOM population (1,500,000 sq km, w*ww.gulfbase.org/facts.php—visited* on September 27, 2013) is only a small portion (0.47 percent) of the global range (317,453,000 sq km, *ngdc.noaa.gov/mgg/global/etopo1_ocean_volumes.html*). The GOM population is not the only surviving natural occurrence of the sperm whale, as the species occurs in the Pacific, Indian, and Atlantic oceans. Finally, as discussed above, the GOM population does not differ markedly from other populations of the species in its genetic characteristics.

Therefore, the GOM population of the sperm whale does not qualify as a DPS.

Analysis of ESA Section 4(a)(1) Factors

Because the sperm whale population in the GOM does not qualify as a DPS under the ESA, we did not conduct an inquiry of the factors identified in Section 4(a)(1) of the ESA. The sperm whale is currently listed globally as endangered and receiving the full protection of the ESA.

Finding

We find that the GOM population of the sperm whale does not meet the DPS Policy criteria for qualifying as a DPS. Therefore, listing this population as a separate DPS under the ESA is not warranted.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 6, 2013.

Samuel D. Rauch III,

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

[FR Doc. 2013–27180 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board (SAB)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of time change and meeting location.

SUMMARY: The notice of an open meeting of the NOAA Science Advisory Board (SAB) was published in the **Federal Register** on October 2, 2013 (78FR60851). Since the publication of the meeting notice, the starting time for the meeting on November 19, 2013 has changed from 10:00 a.m. to 10:30 a.m. and the meeting adjournment has changed from 2:30 p.m. on November 20, 2013 to 11:30 a.m. The meeting will be held at the Beacon Hotel, 1615 Rhode Island Avenue, Washington, DC 20036. Please see the Web site, *http://www.sab.noaa.gov/Meetings/meetings.html* for the most recent agenda and directions to the meeting location.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459. Email: *Cynthia.Decker@noaa.gov;* or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

SUPPLEMENTARY INFORMATION: None.

Dated: November 6, 2013.

Jamie Krauk,

Acting Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–27178 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Membership of the National Telecommunications and Information Administration's Performance Review Board

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of membership on the National Telecommunications and Information Administration's Performance Review Board Membership.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of NTIA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for NTIA's Performance Review Board begins on November 13, 2013.

FOR FURTHER INFORMATION CONTACT: Ruthie B. Stewart, Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482–3130.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314 (c) (4), the National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of NTIA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for NTIA's Performance Review Board begins on November 13, 2013. The name, position title, and type of appointment of each member of NTIA's Performance Review Board are set forth below by organization:

Department of Commerce, National Telecommunications and Information Administration (NTIA)

Fiona M. Alexander, Associate Administrator, Office of International Affairs, Career SES

Leonard M. Bechtel, Chief Financial Officer and Director of Administration, Career SES, Chairperson

Karl B. Nebbia, Associate Administrator for Spectrum Management, Career SES

Alan W. Vincent, Associate Administrator for Telecommunication Sciences and Director Institute for Telecommunication Sciences, Career SES

Department of Commerce, International Trade Administration (ITA)

Renee A. Macklin, Chief Information Officer, Career SES

Department of Commerce, Economic Development Administration (EDA)

Matthew S. Erskine, Deputy Assistant Secretary for Economic Development, Non-Career SES, Political Advisor

Dated: November 6, 2013.

Debbie Pfaff,

Director, Office of Staffing, Recruitment and Classification, Department of Commerce Human Resources Operations Center.

[FR Doc. 2013–27077 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2013–0054]

Notice of Roundtable on the Renewal of a Continuing Information Collection

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the United States Patent and Trademark Office (USPTO) published a notice inviting written public comment on the renewal of information collection 0651–

0032, Initial Patent Applications. The USPTO plans to conduct a roundtable to obtain additional public input regarding the burden associated with the Initial Patent Applications collection and ways to potentially reduce it. By providing this additional opportunity for public input, the USPTO hopes to increase the level of stakeholder participation in this information collection renewal. The roundtable will be open for any member of the public to provide input.

DATES: *Roundtable:* The roundtable will be held on Wednesday, December 11, 2013, beginning at 10:00 a.m. Eastern Daylight Time (EDT), and ending at 12:00 p.m. EDT.

Registration: Registration for the roundtable is requested by December 4, 2013.

ADDRESSES: *Roundtable:* The roundtable will be held at the USPTO in the first floor conference room (1D70/1D80) of the Jefferson Building, which is located at 500 Dulany Street, Alexandria, Virginia 22314.

Registration: Registration is required, and early registration is recommended because seating is limited. There is no fee to register for the roundtable, and registration will be on a first-come, first-served basis. Registration on the day of the roundtable will be permitted on a space-available basis beginning 30 minutes before the roundtable.

To register, please send an email message to *PRARoundtable2013@uspto.gov* and provide the following information: (1) Your name, title, and if applicable, company or organization, address, phone number, and email address; and (2) if you wish to make an oral presentation at the roundtable, the specific topic or issue to be addressed and the approximate desired length of your presentation. Each attendee, even if from the same organization, must register separately.

The USPTO will attempt to accommodate all persons who wish to make a presentation at the roundtable. After reviewing the list of speakers, the USPTO will contact each speaker prior to the roundtable with the amount of time available and the approximate time that the speaker's presentation is scheduled to begin. Speakers must then send the final electronic copies of their presentations in Microsoft PowerPoint or Microsoft Word to *PRARoundtable2013@uspto.gov* by December 4, 2013, so that the presentation can be displayed at the roundtable. If time permits, the USPTO will provide an opportunity at the roundtable for anyone who wishes to speak without a formal presentation.

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. A list of registered roundtable participants and their associations will be available on the USPTO's Internet Web site at *http://www.uspto.gov/patents/init_events/index.jsp.*

If you need special accommodations due to a disability, please inform the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7728; or by email to *raul.tamayo@uspto.gov.* Additional information about information collection 0651–0032 Initial Patent Applications is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION: Before requiring or requesting information from the public, the PRA requires Federal agencies to (1) seek public comment on the proposed collection of information, and (2) submit a request to collect the information to the Office of Management and Budget (OMB) for review and approval. This provision of the PRA is designed to minimize and control burdens, while maximizing the practical utility and public benefit of the information collected. OMB approval of a collection of information is generally effective for three years from the approval date. Therefore, agencies seek renewal of their approval from OMB to collect the information prior to the expiration of the three-year term.

Information collection 0651–0032, Initial Patent Applications, covers the information collected by the USPTO in connection with the requirements related to the initial filing of a patent application. For example, items of information covered by the 0651–0032 collection include new utility, design, and plant patent applications, continuations and divisionals thereof, and papers filed in connection therewith, such as application data sheets. A complete identification of the items covered by the 0651–0032 collection is available at *http://www.reginfo.gov* under ''Information Collection Review.''

As part of the process of renewing the 0651–0032 collection, the USPTO published a notice on October 1, 2013, inviting the public to provide written comment on the renewal. *See Initial Patent Applications,* 78 FR 60256 (October 1, 2013) (hereinafter ''the October 1 notice''). The October 1 notice provides USPTO's estimates of the burdens associated with providing the information covered by the collection. For example, the October 1 notice includes an estimate of the number of new utility applications the USPTO expects to receive per year over the term of the renewal (approximately 273,000, excluding continuing applications and 35 U.S.C. 371 national stage entry applications) and an estimate of the time it takes to gather the necessary information, prepare the utility application, and submit the completed application to the USPTO (33 hours and 12 minutes). The October 1 notice requests feedback from the public on all of the estimates provided by the USPTO in the 0651–0032 information collection request. The deadline for receipt of written comments in response to the October 1 notice is being extended to December 16, 2013.

As stated in the October 1 notice, when OMB last approved the 0651–0032 collection on January 8, 2011, it included terms of clearance in the Notice of Action it issued announcing the approval. The terms of clearance stated that the USPTO should conduct outreach to stakeholders regarding the burden of the 0651–0032 collection and ways to potentially reduce it before the next renewal of the collection. The goal of the roundtable is to provide this outreach to stakeholders and listen to their feedback on the burdens associated with the 0651–0032 collection. In particular, the USPTO hopes to receive feedback that will allow it to: (a) Evaluate whether the items of information in the 0651–0032 collection are necessary for the proper performance of the functions of the agency, including whether the items of information have practical utility; (b) evaluate the accuracy of the USPTO's estimate of the burden of the 0651–0032 collection, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information being collected; and (d) 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.

Prior to the roundtable, the USPTO will post additional information regarding its estimates of the burdens associated with the 0651–0032 collection on its Internet Web site at

http://www.uspto.gov/patents/init_events/index.jsp. For example, prior to the roundtable, the USPTO will make available on its Web site a draft of the supporting statement associated with the renewal request for the collection. The supporting statement will contain a more detailed analysis of the USPTO's burden estimates for the 0651–0032 collection. The public is invited to review both the information provided in the October 1 notice and the information that will be provided at *http://www.uspto.gov/patents/init_events/index.jsp* prior to attending the roundtable, in order to better inform the discussion at the roundtable. In addition, the public is encouraged to submit written comments to the USPTO on or before December 16, 2013, the extended comment deadline for the October 1 notice.

Dated: November 5, 2013.

Teresa Stanek Rea,

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

[FR Doc. 2013–27101 Filed 11–12–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0112]

Privacy Act of 1974; System of Records

AGENCY: National Geospatial-Intelligence Agency, DoD.

ACTION: Notice to add a new system of records.

SUMMARY: The National Geospatial-Intelligence Agency is establishing a new system of records in its inventory of record systems subject to the Privacy Act of 1974, as amended. NGA is establishing a system of records to account for government employees' and military personnel activities for the purpose of providing operational metrics, tracking budgets, and presenting work products to senior leadership regarding travel, training and supplies. Data is used by leadership to effectively and efficiently make decisions for fiscal and resource planning.

DATES: This proposed action will be effective on December 16, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 13, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: National Geospatial-Intelligence Agency (NGA), ATTN: Security Specialist, Mission Support, MSRS P–12, 7500 GEOINT Drive, Springfield, VA 22150.

SUPPLEMENTARY INFORMATION: The National Geospatial-Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/privacy/SORNs/component/ngia/index.html*.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 17, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 6, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NGA–007

SYSTEM NAME:

National Geospatial-Intelligence Agency Management and Execution Tracker (MET)

SYSTEM LOCATION:

Records are maintained at NGA headquarters in Washington, DC metro facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government employees and military personnel at the National Geospatial Intelligence Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, current address, date and place of birth, employee ID number, program element code, department ID, job code, supervisor, email address, occupation, official title, subproject code, work address, home address, work phone, home phone, Social Security Number (SSN), travel information, contact information, discretionary training information and supply information. In addition, dates of employee and military personnel activities, budget allocations and assignments, and classified justifications are also included in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

NGA collects, uses, maintains, and disseminates information to account for government employees and military members' activities for the purpose of providing operational metrics, tracking budgets, and presenting work products to senior leadership regarding travel, training, and supply. Data is used by leadership to effectively and efficiently make decisions for fiscal and resource planning.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES FOR SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may be specifically disclosed outside of the DoD as a routine pursuant to 5 U.S.C. a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of NGA's compilation or systems of records notices may apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name or any of the personal identifiers listed above.

SAFEGUARDS:

Records in this system are safeguarded in accordance with

applicable rules and policies, including all applicable NGA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the stored information. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances and permissions. Usage of physical access controls, encryption, monitoring and auditing mechanisms protect the information stored on the system.

RETENTION AND DISPOSAL:

NGA will maintain travel related records in electronic form for six years, and training, budget, and supply related records for two years, after which, hardcopies are filed with the supervisor and archived with Record Services for six years.

SYSTEM MANAGER(S) AND ADDRESS:

Resource and Programming Office, Execution Division, Operations Branch Chief (ABREO), Analysis Directorate, National Geospatial-Intelligence Agency (NGA), 7500 GEOINT Dr., Springfield, VA 22150.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

A request for notification must meet the requirements of 32 CFR 320.4. The request envelope and letter should both be clearly marked ''Privacy Act Inquiry.''

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury, as a substitute for notarization.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

A request for access must meet the requirements of 32 CFR 320.4. The request envelope and letter should both be clearly marked ''Privacy Act Inquiry.''

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury, as a substitute for notarization.

CONTESTING RECORD PROCEDURES:

Individuals contesting the accuracy of records in this system of records containing information about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

A request for contesting records must meet the requirements of 32 CFR 320.4. The request envelope and letter should both be clearly marked ''Privacy Act Inquiry.''

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury, as a substitute for notarization.

RECORD SOURCE CATEGORIES:

Information originates from the individual and the NGA PeopleSoft Directory.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) and published in 32 CFR Part 320. For additional information, contact the system manager.

[FR Doc. 2013–27065 Filed 11–12–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0108]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Direct Stafford/Ford Loan and Federal Direct Subsidized/ Unsubsidized Stafford/Ford Loan Master Promissory Note

Correction

In notice document 2013–26710, appearing on page 66906 in the issue of Thursday, November 7, 2013, make the following correction:

On page 66906, in the second column, on the 21st line, ''November 7, 2013'' should read ''December 9, 2013''.

[FR Doc. C1–2013–26710 Filed 11–12–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology Meeting

AGENCY: Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially-closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

DATES: November 21, 2013; 9:30 a.m. to 12:00 p.m.

ADDRESSES: National Academy of Sciences (in the Lecture Room), 2101 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Ms. Marjory Blumenthal by email at: *mblumenthal@ostp.eop.gov* or telephone: (202) 456–4444. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on

Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on November 21, 2013 from 9:30 a.m. to 12:00 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear from speakers who will provide information on privacy and other topics. PCAST will also provide updates on its studies of education information technology and cyber-security. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately one hour with the President on November 21, 2013, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. § 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on November 21, 2013 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at the following Web site: *http://whitehouse.gov/;ostp/pcast,* no later than 12:00 p.m. (Eastern Time) on November 14, 2013. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. Eastern Time on November 14, 2013, so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Ms. Marjory Blumenthal at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on November 6, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–27106 Filed 11–12–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Memorandum of Understanding Between the Department of Energy and U.S. Fish and Wildlife Service Regarding Implementation of Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds

AGENCY: Office of Health, Safety and Security, Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) is informing the public of the availability of its Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service (FWS). The purpose of the MOU is to strengthen migratory bird conservation through enhanced collaboration between DOE and the FWS, in coordination with state, tribal, and local governments. The MOU identifies specific areas in which cooperation between DOE and the FWS will substantially contribute to the conservation and management of migratory birds and their habitats.

ADDRESSES: The MOU is available at *http://energy.gov/hss/downloads/memorandum-understanding-responsibilities-federal-agencies-protect-migratory-birds.*

FOR FURTHER INFORMATION CONTACT: Jane Powers, Office of Sustainability Support, Office of Health, Safety, and Security, at *jane.powers@hq.doe.gov* or 202–586–7301 or Josh Silverman, Director, Office of Sustainability Support, Office of Health, Safety, and Security, at *josh.silverman@hq.doe.gov* or 202–586–6535.

SUPPLEMENTARY INFORMATION: This MOU is pursuant to the Migratory Bird Treaty Act (MBTA) and Executive Order (EO) 13186. The MBTA is the domestic law that affirms the United States' commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of a shared migratory bird resource. Each of the conventions protect selected species of birds that are common to both countries (i.e., they occur in both countries at some point during their annual life cycle). The MBTA protects migratory birds by governing the taking, killing, possession, transportation, and importation of such birds, their eggs, parts, or nests.

E.O. 13186, *Responsibilities of Federal Agencies to Protect Migratory Birds,* signed on January 10, 2001, directs Federal agencies to take certain actions to further implement the MBTA and promote the conservation of migratory bird populations. E.O. 13186 outlines Federal agency responsibilities

and establishes an interagency Council for the Conservation of Migratory Birds to oversee the implementation of this Order. It requires agencies to avoid or minimize the adverse impact of their actions on migratory birds and ensure that environmental analyses under the National Environmental Policy Act evaluate the effects of proposed Federal actions on such species.

DOE and FWS entered into the first MOU on migratory bird protection in 2006. This updated MOU, signed September 12, 2013, took effect upon signature of DOE and FWS and remains in effect for five years. Section F.9 of the MOU directs DOE to advise the public of this MOU through a notice published in the **Federal Register**.

Issued in Washington, DC, on November 1, 2013.

Andrew C. Lawrence,

Director, Office of Environmental Protection, Sustainability Support and Corporate Safety Analysis, U.S. Department of Energy.

[FR Doc. 2013–27120 Filed 11–12–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CD–009]

Petition for Waiver and Notice of Granting the Application for Interim Waiver of Indesit Company From the DOE Residential Clothes Dryer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Petition for Waiver, Granting of Application for Interim Waiver, and Request for Public Comments.

SUMMARY: This notice announces receipt of and publishes the Indesit Company (Indesit) petition for waiver from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of residential clothes dryers. The waiver request pertains to Indesit's specified models of condensing residential clothes dryers. The existing test procedure does not apply to condensing clothes dryers. In addition, today's notice grants Indesit an interim waiver from the DOE test procedure applicable to residential clothes dryers. DOE solicits comments, data, and information concerning Indesit's petition.

DATES: DOE will accept comments, data, and information with respect to Indesit's Petition until December 13, 2013.

ADDRESSES: You may submit comments, identified by case number CD–009, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. CD–009] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–2J, Petition for Waiver Case No. CD–009, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter and comments received, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., (Resource Room of the Building Technologies Program), Washington, DC, 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential clothes dryers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). The test procedure for clothes dryers is contained in 10 CFR part 430, subpart B, appendix D.

DOE's regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(a)(2); 430.27(g). An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

petition for waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 430.27(h).

On January 6, 2011, DOE published a test procedure final rule (76 FR 1032) to include provisions for testing ventless clothes dryers. The rule became effective on February 7, 2011, and requires compliance on or after January 1, 2015. Ventless clothes dryers manufactured on or after January 1, 2015, must be tested with the new DOE test procedure.

II. Petition for Waiver of Test Procedure

On October 22, 2013, Indesit filed a petition for waiver and an application for interim waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR Part 430, subpart B, appendix D. Indesit seeks a waiver from the applicable test procedure for its Ariston TCL73XNA and TCL73XSNA condensing clothes dryers because, Indesit asserts, design characteristics of these models prevent testing in accordance with the currently prescribed test procedure, as described in greater detail in the following paragraph. DOE granted similar waivers for the same type of clothes dryer to Bosch (BSH) (76 FR 33271, June 8, 2011), Miele Appliance, Inc. (Miele) (60 FR 9330, February 17, 1995; 76 FR 17637, March 30, 2011), LG Electronics (73 FR 66641, November 10, 2008), Whirlpool Corporation (74 FR 66334, December 15, 2009), General Electric (75 FR 13122, March 18, 2010), and ASKO Appliances, Inc. (ASKO) (78 FR 53446, August 29, 2013). Indesit claims that its condensing clothes dryers cannot be tested pursuant to the DOE procedure and requests that the same waiver granted to other manufacturers be granted for Indesit's Ariston TCL73XNA and TCL73XSNA models.

In support of its petition, Indesit claims that the current clothes dryer test procedure applies only to vented clothes dryers because the test procedure requires the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condensing clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. Indesit plans to market its condensing clothes dryers for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and other buildings where exhaust venting is not practical or is cost prohibitive.

The Indesit petition requests that DOE grant a waiver from the existing test procedure to allow for the sale of two models (TCL73XNA and TCL73XSNA) until DOE prescribes final test procedures and minimum energy conservation standards appropriate to condensing clothes dryers. Similar to the other manufacturers of condensing clothes dryers, Indesit did not include an alternate test procedure in its petition.

III. Application for Interim Waiver

Indesit also requests an interim waiver from the existing DOE test procedure for immediate relief. DOE has determined that Indesit's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Indesit might experience absent a favorable determination on its application for interim waiver. DOE understands, however, that the Indesit condensing clothes dryers have a feature that prevents testing them according to the existing DOE test procedure. In addition, as stated in the previous section, DOE has previously granted waivers to ASKO, BSH, Miele, LG, Whirlpool and GE for similar products. It is in the public interest to have similar products tested and rated for energy consumption on a comparable basis, where possible. Further, DOE has determined that Indesit is likely to succeed on the merits of its petition for waiver for the same reasons set forth in the waivers to other manufacturers, and that it is desirable for policy reasons to grant immediate relief.

IV. Interim Waiver Granted

For the reasons stated above, DOE grants Indesit's application for interim waiver from testing of its condensing clothes dryer product line. Therefore, *it is ordered that:*

The application for interim waiver filed by Indesit is hereby granted for Indesit's Ariston TCL73XNA and TCL73XSNA condensing clothes dryers. Indesit shall not be required to test its Ariston TCL73XNA and TCL73XSNA condensing clothes dryers on the basis of the test procedure under 10 CFR part 430, subpart B, appendix D, consistent with the timing provisions in 430.27(h).

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may or may not be manufactured by the petitioner. Indesit may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes dryers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

V. Summary and Request for Comments

Through today's notice, DOE grants Indesit an interim waiver from the specified portions of the test procedure applicable to Indesit's Ariston TCL73XNA and TCL73XSNA condensing clothes dryers and announces receipt of Indesit's petition for waiver from those same portions of the test procedure. DOE publishes Indesit's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Mr. Aldo Cariati, Indesit Company, Centro Gerre 2000, Via Pobiette, 11, CH—6928 Manno (Lugano), Switerland. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: one copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential

status of the information and treat it according to its determination.

Issued in Washington, DC, on November 6, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

22nd October 2013.

Dr. David T Danielson, Assistant Secretary, Energy Efficiency & Renewable Energy, U.S. Department of Energy, Mail Station EE–1, 1000 Independence Avenue SW., Washington, DC 20585.

Dear Assistant Secretary Danielson, Indesit Company International Business S.A. based in Lugano, Ticino 6928 Switzerland hereby submits this Petition for Waiver and application for Interim Waiver, pursuant to 10 CFR 430.27, for its Ariston branded condenser tumble dryer models TCL 73 X NA and TCL 73 XS NA.

Indesit Company is a European manufacturer of household appliances including refrigeration, washing machines, cookers and dishwashers in addition to tumble dryers. The company head office is in Italy and the tumble dryer manufacturing plant is in the UK. In addition to tumble dryers Indesit Company also sells, washers, washerdryers, hobs, ovens and hoods in the USA under the Ariston, Scholtes and Splendide brands.

This petition and application are based on the following major points:

1. Indesit's petition is for condenser clothes dryer models TCL73XNA and TCL73XSNA for sale in the USA during the remainder of 2013 and 2014.

2. The test procedures outlined in 10 CFR part 430, subpart B, appendix D cannot be applied to condensing type tumble dryers.

3. Waivers have previously been granted for similar products produced by other manufacturers including Bosch, Miele and ASKO.

4. The equivalent product on sale in Europe has been tested in accordance the European energy labelling standard and complies with the European energy labelling directives.

5. Lack of relief will impose economic hardship on Indesit Company particularly where Indesit washing machines are sold as a pair with a matching tumble dryer, which is common practice in the USA.

6. Indesit will notify all clothes dryer manufacturers of domestically marketed units known to Indesit of this petition and application by letter.

We would be pleased to discuss this request with the DOE and to provide any further information as required.

Yours sincerely,

Aldo Cariati,

Marketing Manager International Business, Indesit Company—International Business S.A., Centro Gerre 2000, Via Pobiette, 11, CH—6928 Manno (Lugano), Telephone (+41) 916119900, Fax (+41) 916119900.

[FR Doc. 2013–27114 Filed 11–12–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7320–042]

Erie Boulevard Hydropower, L.P.; Notice of Scoping Meetings and Environmental Site Review and Soliciting Scoping Comments

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 7320–042.

c. *Date filed:* July 1, 2013.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Chasm Hydroelectric Project.

f. *Location:* On the Salmon River, in Franklin County, New York. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Steven Murphy, Compliance Specialist, Brookfield Renewable Power—New York West Operations, 33 West 1st Street South, Fulton, NY 13069; (315) 589–6130; email—*steven.murphy@brookfieldpower.com.*

i. *FERC Contact:* John Mudre at (202) 502–8902; or email at *john.mudre@ferc.gov.*

j. *Deadline for filing scoping comments:* January 6, 2014.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–7320–042.

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 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.

k. This application is not ready for environmental analysis at this time.

l. The existing Chasm Project consists of: (1) A 201-foot-long, 32-foot-high maximum height concrete gravity-type dam having a spillway section with crest elevation 1,283.8 feet mean sea level (msl) about 100 feet long, surmounted by 2-foot-high flashboards and having an intake section with steel trash racks and headgates; (2) a reservoir having a surface area of about 22 acres and a gross storage capacity of 74 acre-feet at normal pool elevation of 1,285.8 feet msl; (3) a 7-foot-diameter welded steel pipeline approximately 3,355 feet in length connecting to a 6-foot-diameter steel manifold pipeline just upstream of the powerhouse; (4) a powerhouse containing three Francis-type generating units having a total rated capacity of 3,350 kilowatts operated under a 268-foot head and at a flow of 195 cubic feet per second; (5) a 20-foot-wide, 850-foot-long tailrace; (6) 50-foot-long buried generator leads extending from the powerhouse to a non-project substation owned and operated by National Grid; and 7) appurtenant facilities.

m. A copy of the application is 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

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, contact FERC Online Support.

n. Scoping Process

The Commission intends to prepare an Environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-

governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Public Scoping Meeting

DATE: December 4, 2013.
TIME: 7:00 p.m.
PLACE: Holiday Inn Express Conference Room.
ADDRESS: 3351 State Route 11, Malone, New York.

Agency Scoping Meeting

DATE: December 5, 2013.
TIME: 10:00 a.m.
PLACE: Holiday Inn Express Conference Room.
ADDRESS: 3351 State Route 11, Malone, New York.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

Environmental Site Review

The Applicant and FERC staff will conduct a project Environmental Site Review beginning at 1:00 p.m. on December 5, 2013. All interested individuals, organizations, and agencies are invited to attend. All participants should meet in the lobby of the Holiday Inn Express, 3351 State Route 11, Malone, New York. All participants are responsible for their own transportation to the site. Anyone with questions about the Environmental Site Review should contact Mr. Steven Murphy at *steven.murphy@brookfieldpower.com.*

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Dated: November 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27045 Filed 11–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2629–014]

Village of Morrisville, Vermont; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.
b. *Project No.:* 2629–014.
c. *Date Filed:* April 25, 2013.
d. *Applicant:* Village of Morrisville, Vermont (Morrisville).
e. *Name of Project:* Morrisville Hydroelectric Project.
f. *Location:* On the Green River, Elmore Pond Brook, and Lamoille River, in Lamoille County, Vermont. 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:* Craig Myotte, Village of Morrisville, Water & Light Department, P.O. Box 460—857 Elmore Street, Morrisville, Vermont, 05661–0460; (802) 888–6521 or *cmyotte@mwlvt.com.*
i. *FERC Contact:* Steve Kartalia, (202) 502–6131 or *stephen.kartalia@ferc.gov.*
j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2629–014.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor 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.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The Project Description:*

The existing Morrisville Hydroelectric Project consists of four developments with a total installed capacity of 4,990 kilowatts (kW). The project's average annual generation is 9,032,221 kilowatt-hours. The power generated by the Morrisville Project is used by Morrisville to meet the power needs of its regional retail customers within the Village of Morrisville and surrounding communities.

Green River Development

The existing Green River Development is located on the Green River and consists of: (1) A 360-foot-long, 105-foot-high concrete arch dam that includes, near its center, a 60-foot-long ungated spillway with a crest elevation of 1,220 feet above mean sea level (msl); (2) a 45-foot-long, 15-foot-high concrete gravity weir that creates a 180-foot-long, 11-foot-deep stilling pool downstream of the concrete arch dam; (3) a 200-foot-long, 16-foot-high earthen embankment with 2-foot-high wooden wave barriers approximately 1.25 miles southeast of the concrete arch dam; (4) a 690-acre impoundment with a storage

capacity of 17,400-acre-feet and a normal maximum elevation of 1,220 feet msl; (5) a 16-foot-long, 12-foot-high gated intake structure; (6) a 22-foot-long, 16-foot-wide intake-valve house and a 14-foot-long, 13-foot-wide outlet-valve house; (7) a 116-foot-long penstock, that includes a 6-foot-diameter, 94.5-foot-long buried, steel section that bifurcates into two 3-foot-diameter, 21.5-foot-long steel sections; (8) a 32-foot-long, 37-foot-wide concrete powerhouse containing two 945-kW turbine-generator units for a total installed capacity of 1,890 kW; (9) a 14.5-foot-long, concrete tailrace; (10) a 5-mile-long, 34.5-kilovolt (kV) transmission line connecting the powerhouse to the regional grid; and (11) appurtenant facilities.

The Green River Development bypasses approximately 180 feet of the Green River, including the stilling pool.

Lake Elmore Development

The existing Lake Elmore Development is located on Elmore Pond Brook and consists of: (1) A 26-foot-long, 10-foot-high concrete gravity dam and spillway with a crest elevation of 1,139 feet msl; (2) a 300-acre impoundment (Lake Elmore) with a 1,000-acre-foot storage capacity and a normal maximum water surface elevation of 1,139 feet msl; (3) a 8.5-foot-long, 7.5-foot-wide gatehouse; (4) a 8.3-foot-long, 3.5-foot-high gated intake structure; (5) a 2.5-foot-long concrete-lined tailrace; and (6) appurtenant facilities.

Morrisville Development

The existing Morrisville Development is located on the Lamoille River and consists of: (1) A 384-foot-long, 37-foot-high concrete gravity dam comprised of a 138-foot-long concrete retaining wall, a 30-foot-long intake and gatehouse section, and a 216-foot-long spillway with two 108-foot-long, 4-foot-high Obermeyer inflatable crest gates and a crest elevation of 627.79 feet msl; (2) a 141-foot-long, 8-foot-high concrete wall approximately 260 feet northwest of the dam that includes a 60-foot-long overflow section (back spillway) with 2-foot-high wooden flashboards ; (3) a 15-acre impoundment with a 72-acre-foot storage capacity and a normal maximum water surface elevation of 631.79 feet msl; (4) a 28-foot-long, 36-foot-wide gatehouse; (5) a 30-foot-long, 16-foot-high gated intake structure; (6) one 7-foot-diameter, 150-foot-long buried steel penstock and one 10-foot-diameter, 150-foot-long buried, steel penstock; (7) a 54.5-foot-long, 30.5-foot-wide concrete-brick powerhouse containing a 600-kW turbine-generator unit and a 1,200-kW turbine-generator unit for a total installed capacity of 1,800 kW; (8) one 17.5-foot-long concrete-lined tailrace and one 14.0-foot-long concrete-lined tailrace; (9) a 435-foot-long, 34.5-kV transmission line connecting the powerhouse to the regional grid; and (10) appurtenant facilities.

The Morrisville Development bypasses approximately 380 feet of the Lamoille River.

Cadys Falls Development

The existing Cadys Falls Development is located on the Lamoille River approximately 1 mile downstream of the Morrisville Development and consists of: (1) A 364-foot-long, 41-foot-high concrete gravity dam comprised of a 23-foot-long embankment section, a 186-foot-long spillway section with 3.5-foot-high wooden flashboards and a crest elevation of 576.89 feet msl, a 60-foot-long intake and gatehouse section, and a 95-foot-long non-overflow section; (2) a 150-acre impoundment (Lake Lamoille) with a 72-acre-foot storage capacity and a normal maximum water surface elevation of 580.39 feet msl; (3) a 29-foot-long, 40-foot-wide gatehouse; (4) an 18.0-foot-long, 9.2-foot-high gated intake structure; (5) a buried, steel penstock that includes a 7-foot-diameter, 1,110-foot-long section leading to a 35.6-foot-high, 29.7-foot-diameter concrete surge tank and bifurcating into a 90-foot-long, 8-foot-diameter section and a 30-foot-long, 9-foot-diameter section; (6) a 96-foot-long, 46-foot-wide concrete-brick powerhouse containing a 600-kW turbine-generator unit and a 700-kW turbine-generator unit for a total installed capacity of 1,300 kW; (7) a 12-foot-long concrete-lined tailrace; (8) a 150-foot-long, 34.5-kV transmission line connecting the powerhouse to the regional grid; and (9) appurtenant facilities.

The Cadys Falls Development bypasses approximately 1,690 feet of the Lamoille River.

The Green River and Lake Elmore developments are operated in seasonal store and release mode and the Morrisville and Cadys Falls developments are operated in run-of-river mode. The existing license requires instantaneous minimum flows of 5.5 cubic feet per second (cfs) in the tailrace of the Green River Development; 135 cfs and 12 cfs in the tailrace and bypassed reach of the Morrisville Development, respectively; and 150 cfs in the tailrace of the Cadys Falls Development. Morrisville proposes to maintain existing project operations and provide additional minimum flows of 4 cfs over the back spillway at the Morrisville Development and 12 cfs in the bypassed reach at the Cadys Falls Development. Morrisville also proposes to remove the Lake Elmore Development from the project and remove a 0.4-acre parcel of property at the Morrisville Development from the project boundary.

m. A copy of the application is 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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, contact FERC Online Support.

n. 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, and .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.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (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, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). 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. 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.

o. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	January 2014.
Commission issues EA	May 2014.
Comments on EA	June 2014.
Modified terms and conditions.	July 2014.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: November 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27047 Filed 11–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2317–001.
Applicants: New York Independent System Operator, Inc.
Description: NYISO compliance filing re: NYPA's amended annual transmission revenue rqrmnt to be effective 8/1/2012.
Filed Date: 11/4/13.
Accession Number: 20131104–5043.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER13–2298–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 11–01–13 Module E–1 LRR Compliance to be effective 10/30/2013.
Filed Date: 11/4/13.
Accession Number: 20131104–5053.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–300–000.
Applicants: Kansas City Power & Light Company.
Description: Rate Schedule 138 Filing to be effective 1/1/2014.
Filed Date: 11/4/13.
Accession Number: 20131104–5002.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–301–000.
Applicants: KCP&L Greater Missouri Operations Company.
Description: Rates Schedule 135 Concurrence to be effective 11/1/2013. [Transmittal letter requesting 1/1/2014 effective date.]
Filed Date: 11/4/13.
Accession Number: 20131104–5004.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–301–001.
Applicants: KCP&L Greater Missouri Operations Company.
Description: KCP&L Greater Missouri Operations Company submits GMO Supplemental RS 135 Concurrence Filing to be effective 1/1/2014.
Filed Date: 11/4/13.
Accession Number: 20131104–5108.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–302–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position V4–024; Original Service Agreement No. 3635 to be effective 10/3/2013.
Filed Date: 11/4/13.
Accession Number: 20131104–5062.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–303–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Exhibit A through D Amendments to be effective 1/1/2014.
Filed Date: 11/4/13.
Accession Number: 20131104–5064.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–304–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position V4–041; Original Service Agreement No. 3651 to be effective 10/3/2013.
Filed Date: 11/4/13.
Accession Number: 20131104–5067.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–305–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits Queue Position V4–042; Original Service Agreement No. 3652 to be effective 10/3/2013.
Filed Date: 11/4/13.
Accession Number: 20131104–5068.
Comments Due: 5 p.m. ET 11/25/13.

Docket Numbers: ER14–306–000.
Applicants: Fale-Safe, Inc., Portland General Electric Company.
Description: Portland General Electric Company submits Notice of Cancellation and pro forma tariff sheets of Market Based Rate Schedule No. 1 on behalf of Fale-Safe, Inc.
Filed Date: 11/1/13.
Accession Number: 20131101–5245.
Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–307–000.
Applicants: Alabama Power Company.
Description: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Vogtle 3 & 4 LGIA Filing to be effective 10/28/2013.
Filed Date: 11/4/13.
Accession Number: 20131104–5101.
Comments Due: 5 p.m. ET 11/25/13.

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 4, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–27061 Filed 11–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–99–000.
Applicants: Midwestern Gas Transmission Company.

Description: Midwestern Gas Transmission Company's 2012–2013 Cashout Report.
Filed Date: 10/30/13.
Accession Number: 20131030–5192.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–100–000.
Applicants: Texas Eastern Transmission, LP.
Description: ConocoPhillips 11–01–2013 Releases to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5048.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–101–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Amendment to Neg Rate Agmts (QEP 36601–18 and 37657–42) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5050.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–102–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (BP 37663 to Encana 41414) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5054.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–103–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (BP 34686 to Enerquest 41426) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5058.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–104–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Title Page—Housekeeping to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5060.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–105–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: KeySpan Ramapo November 2013 Releases to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5066.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–106–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Brooklyn Union Ramapo November 2013 Releases to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5068.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–107–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (EOG 34687 to TransLouisiana 41436) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5071.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–108–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: ConEd Ramapo November 2013 Releases to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5072.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–109–000.
Applicants: Portland Natural Gas Transmission System.
Description: Section 8.1 Revision to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5087.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–110–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Renaissance Negotiated Rate to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5103.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–111–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: ETC Tiger 2013 Semi-Annual Fuel Filing on 10/31/13 to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5111.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–112–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: ETC Tiger Out of Cycle Fuel Filing on 10/31/13 to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5113.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–113–000.
Applicants: Northern Natural Gas Company.
Description: 20131031 Flint Hills Non-Conforming to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5114.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–114–000.
Applicants: Fayetteville Express Pipeline LLC.
Description: FEP 2013 Semi-Annual Fuel Filing 10/31/13 to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5115.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–115–000.
Applicants: Texas Eastern Transmission, LP.
Description: Range Resources 11–1–2013 release to DTE Energy to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5116.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–116–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Non-Conforming Agreements—Cherokee to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5117.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–117–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: FL&U Filing Effective December 1, 2013 to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5120.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–118–000.
Applicants: WBI Energy Transmission, Inc.
Description: Section 4 Rate Case to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5134.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–119–000.
Applicants: Rockies Express Pipeline LLC.
Description: Neg Rate NC 2013–10–25 Ultra, Encana, ConocoPhillips to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5137.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–120–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Removing Expiring Agreements to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5153.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–121–000.
Applicants: Northern Natural Gas Company.
Description: 20131031 Negotiated Rate to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5156.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–122–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: Negotiated Rates for 11–1–2013 to be effective 11/1/2013.
Filed Date: 10/31/13.

Accession Number: 20131031–5174.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–123–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: AGT FRQ 2013 FILING to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5194.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–124–000.
Applicants: Southern LNG Company, L.L.C.
Description: SLNG Electric Power Cost Adjustment—2013 to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5196.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–125–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: ConEd 2nd Ramapo Release November 2013 to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5204.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–126–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—October 31, 2013 Nonconforming Service Agreement to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5208.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–127–000.
Applicants: Texas Eastern Transmission, LP.
Description: Rate Schedules X–135 and X–137 Term Extension to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5216.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–128–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Neg Rate—Tenaska Marketing Ventures 11–1–2013 to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5223.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–129–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: AGT Negotiated Rate Filing—Falcon to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5247.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–130–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Fuel Tracker 12/1/13 to be effective 12/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5249.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–131–000.
Applicants: Tallgrass Interstate Gas Transmission, L.
Description: Neg Rate 2013–10–31 DCP(2), Cheasp. and Cross Timbers to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5251.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–132–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Negotiated Rates—Leidy East—PECO to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5255.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–133–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 10/31/13 Negotiated Rates—United Energy Trading, LLC (RTS) 5095–22 to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5256.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–134–000.
Applicants: Viking Gas Transmission Company.
Description: Conforming Backhaul Agreement NSP.
Filed Date: 10/31/13.
Accession Number: 20131031–5258.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–135–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Update List of Non-Conforming Service Agreements (Cherokee) to be effective 11/1/2013.
Filed Date: 10/31/13.
Accession Number: 20131031–5286.
Comments Due: 5 p.m. ET 11/12/13.

Docket Numbers: RP14–136–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Negotiated Rate Agreements—Tenaska Gas Storage, L.L.C. to be effective 11/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5000.
Comments Due: 5 p.m. ET 11/13/13.

Docket Numbers: RP14–137–000.
Applicants: Texas Eastern Transmission, LP.
Description: ASA TETLP DEC 2013 FILING to be effective 12/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5001.
Comments Due: 5 p.m. ET 11/13/13.

Docket Numbers: RP14–138–000.
Applicants: ANR Pipeline Company.
Description: Nexen—Wisconsin Agmts to be effective 11/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5030.
Comments Due: 5 p.m. ET 11/13/13.

Docket Numbers: RP14–139–000.
Applicants: Enable Gas Transmission, LLC.
Description: Negotiated Rate Filing—November 2013 to be effective 11/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5043.
Comments Due: 5 p.m. ET 11/13/13.

Docket Numbers: RP14–140–000.
Applicants: Texas Gas Transmission, LLC.
Description: Amendment to Neg Rate Agmt (Cross Timbers 31115–1) to be effective 11/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5054.
Comments Due: 5 p.m. ET 11/13/13.

Docket Numbers: RP14–141–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Permanent and Temporary Releases (HK 37731, 37733 to Petrohawk 41455, 41448) to be effective 11/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5055.
Comments Due: 5 p.m. ET 11/13/13.

Docket Numbers: RP14–142–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (EnCana 37663 to Texla 41440) to be effective 11/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5056.
Comments Due: 5 p.m. ET 11/13/13.

Docket Numbers: RP14–143–000.
Applicants: Columbia Gas Transmission, LLC.
Description: OTRA—Nov 2013 to be effective 12/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5057.
Comments Due: 5 p.m. ET 11/13/13.

Docket Numbers: RP14–144–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (JW Operating 34690 to Q West 41466) to be effective 11/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5058.
Comments Due: 5 p.m. ET 11/13/13.

Docket Numbers: RP14–145–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 11/01/13 Negotiated Rates—Cargill Incorporated (RTS) 3085–19 to be effective 11/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5147.
Comments Due: 5 p.m. ET 11/13/13.

Docket Numbers: RP14–146–000.

Applicants: Guardian Pipeline, L.L.C.
Description: Transporter's Use Gas and EPC Adjustment Priority Correction to be effective 11/1/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5150.
Comments Due: 5 p.m. ET 11/13/13.

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 4, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–27062 Filed 11–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–147–000.
Applicants: Texas Gas Transmission, LLC.
Description: Re-release of Neg Rate Agmt (SIGECO 33274 to ETC ProLiance 33380) to be effective 11/1/2013.
Filed Date: 11/4/13.
Accession Number: 20131104–5021.
Comments Due: 5 p.m. ET 11/18/13.

Docket Numbers: RP14–148–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Rate Case Settlement First Compliance Filing in Docket No. RP13–184–000 to be effective 7/1/2013.
Filed Date: 11/4/13.
Accession Number: 20131104–5046.
Comments Due: 5 p.m. ET 11/18/13.

Docket Numbers: RP14–149–000.
Applicants: AEP Generation Resources Inc., Ohio Power Company.
Description: Notice of Change of Ownership, Request for Temporary Waiver, Request for Expedited Action, and Request for Shortened Notice Period of AEP Generation Resources, Inc. and Ohio Power Company.
Filed Date: 11/4/13.
Accession Number: 20131104–5153.
Comments Due: 5 p.m. ET 11/12/13.

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: RP14–148–001.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Wyoming Interstate Company, L.L.C. submits tariff filing per 154.203: Rate Case Settlement Second Compliance Filing in Docket No. RP13–184–000 to be effective 1/1/2014.
Filed Date: 11/4/13.
Accession Number: 20131104–5063.
Comments Due: 5 p.m. ET 11/18/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 5, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–27063 Filed 11–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–20–000.
Applicants: RE Rosamond One LLC, RE Rosamond Two LLC.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Requests for Waivers, Confidential Treatment, and Expedited Consideration of RE Rosamond One LLC and RE Rosamond Two LLC.
Filed Date: 11/1/13.
Accession Number: 20131101–5187.
Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: EC14–21–000.
Applicants: Malacha Hydro Limited Partnership, BAIF Malacha Holdings LLC, CD Malacha I, Inc.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Malacha Hydro Limited Partnership.
Filed Date: 11/1/13.
Accession Number: 20131101–5237.
Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: EC14–22–000.
Applicants: Victory Garden Phase IV, LLC, Sagebrush, a California partnership, Sagebrush Partner Sixteen, Inc., Alpah Joshua, Inc., Alpha Joshua (Prime), Inc., Beta Willow (Prime), Inc., Beta Willow, Inc., Beta Joshua, Inc.
Description: Application for Authorization for Disposition of Jurisdictional Facilities, Request for Confidential Treatment, and Request for Expedited Consideration of Victory Garden Phase IV, LLC, et al.
Filed Date: 11/1/13.
Accession Number: 20131101–5239.
Comments Due: 5 p.m. ET 11/22/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3918–001.
Applicants: Black Hills/Colorado Electric Utility Co.
Description: Compliance Filing to be effective 7/1/2011.
Filed Date: 11/1/13.
Accession Number: 20131101–5104.
Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER13–2031–001.
Applicants: Southwest Power Pool, Inc.
Description: Compliance Withdrawal Revisions Bylaws/MA to be effective 9/23/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5143.
Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–45–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 11–1–2013 Forward-ATC LGIA Amendment to be effective 10/8/2013.
Filed Date: 11/1/13.
Accession Number: 20131101–5168.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–249–000.

Applicants: Portland General Electric Company.

Description: NTTG Funding Agreement to be effective 1/1/2014.

Filed Date: 10/31/13.

Accession Number: 20131031–5231.

Comments Due: 5 p.m. ET 11/21/13.

Docket Numbers: ER14–281–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 11–1–13 Credit Clean-Up to be effective 2/1/2014.

Filed Date: 11/1/13.

Accession Number: 20131101–5172.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–282–000.

Applicants: Wyoming Colorado Intertie, LLC.

Description: Notice of TSA Termination Between WCI and Wyoming Wind to be effective 10/31/2013.

Filed Date: 11/1/13.

Accession Number: 20131101–5175.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–283–000.

Applicants: Southwest Power Pool, Inc.

Description: EIS Market Offer Cap Update 2014 to be effective 1/1/2014.

Filed Date: 11/1/13.

Accession Number: 20131101–5176.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–284–000.

Applicants: Rainbow Energy Ventures, LLC.

Description: Notice of Cancellation of Tariff to be effective 11/2/2013.

Filed Date: 11/1/13.

Accession Number: 20131101–5177.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–285–000.

Applicants: The Narragansett Electric Company.

Description: Baseline Narragansett Borderline Tariff to be effective 11/2/2013.

Filed Date: 11/1/13.

Accession Number: 20131101–5178.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–286–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 11–1–2013 SA 2523 ITC-Pheasant Run Amended GIA to be effective 11/2/2013.

Filed Date: 11/1/13.

Accession Number: 20131101–5182.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–287–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 11–1–2013 SA 2603 Cumberland-Bush MPFCA to be effective 11/2/2013.

Filed Date: 11/1/13.

Accession Number: 20131101–5184.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–288–000.

Applicants: Exelon Framingham, LLC.

Description: Notice of Cancellation to be effective 1/1/2014.

Filed Date: 11/1/13.

Accession Number: 20131101–5196.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–289–000.

Applicants: Exelon New Boston, LLC.

Description: Notice of Cancellation to be effective 1/1/2014.

Filed Date: 11/1/13.

Accession Number: 20131101–5202.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–290–000.

Applicants: Exelon West Medway, LLC.

Description: Notice of Cancellation to be effective 1/1/2014.

Filed Date: 11/1/13.

Accession Number: 20131101–5205.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–291–000.

Applicants: California Independent System Operator Corporation.

Description: 2013–11–01—Petition—Tariff Waiver—Penasquitos to be effective N/A.

Filed Date: 11/1/13.

Accession Number: 20131101–5207.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–292–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: SA 6505 Big Rivers Electric—Coleman SSR to be effective 9/1/2013.

Filed Date: 11/1/13.

Accession Number: 20131101–5208.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–293–000.

Applicants: Exelon Wyman, LLC.

Description: Notice of Cancellation to be effective 1/1/2014.

Filed Date: 11/1/13.

Accession Number: 20131101–5210.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–294–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 11–01–2013 Schedule 43F Big Rivers Coleman SSR to be effective 9/1/2013.

Filed Date: 11/1/13.

Accession Number: 20131101–5214.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–295–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2013–11–01 OASIS Filing to be effective 1/15/2014.

Filed Date: 11/1/13.

Accession Number: 20131101–5216.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–296–000.

Applicants: Union Power Partners, L.P.

Description: Proposed Rate Schedule FERC No. 2 to be effective 1/1/2014.

Filed Date: 11/1/13.

Accession Number: 20131101–5219.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–297–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to the PJM OATT & OA re Tier 2 Synch Reserve Performance Validation to be effective 1/1/2014.

Filed Date: 11/1/13.

Accession Number: 20131101–5221.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–298–000.

Applicants: Kansas City Power & Light Company.

Description: KCP&L Rate Schedule 137 Filing to be effective 1/1/2014.

Filed Date: 11/1/13.

Accession Number: 20131101–5222.

Comments Due: 5 p.m. ET 11/22/13.

Docket Numbers: ER14–299–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 11–1–2013 G746 Termination to be effective 1/1/2014.

Filed Date: 11/4/13.

Accession Number: 20131104–5001.

Comments Due: 5 p.m. ET 11/25/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–3–001.

Applicants: National Grid USA.

Description: Supplement to Request for Extension of Existing Authorization to Issue Securities under Section 204 of the Federal Power Act, Request for Waivers and for Shortened Comment Period of National Grid USA.

Filed Date: 10/31/13.

Accession Number: 20131031–5283.

Comments Due: 5 p.m. ET 11/12/13.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF14–53–000.

Applicants: Jasmin Power III—SD 6000, LLC.

Description: Form 556 of Jasmin Power III—SD 6000, LLC.

Filed Date: 11/1/13.

Accession Number: 20131101–5235.

Comments Due: 5 p.m. ET 11/22/13.

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 4, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–27064 Filed 11–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–221–000]

Covanta Haverhill Association, LP; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Covanta Haverhill Association, LP's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is November 25, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27044 Filed 11–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–9–000]

Gregory Swecker, Beverly Swecker; Notice of Petition for Enforcement

Take notice that on November 4, 2013, pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824 and Rules 385.26 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), Gregory and Beverly Swecker filed a Petition for Enforcement, requesting the Commission initiate enforcement action against Midland Power Cooperative to ensure that PURPA regulations are properly and lawfully implemented.

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 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online 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 November 25, 2013.

Dated: November 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27046 Filed 11–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD14–5–000]

Town of Telluride, Colorado; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On October 28, 2013, the Town of Telluride, Colorado, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act, as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The Pandora Water System Project would be located within the Pandora Water Treatment Plant in San Miguel County, Colorado.

Applicant Contact: Karen Guglielmone, Public Works Project Manager, P.O. Box 397, Telluride, CO 81435, Phone No. (970) 728–0190.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A 10-inch intake pipe branching off an existing 12-inch raw water pipe; (2) an approximately 20-foot-wide by 22-foot-long powerhouse, containing one 320-kilowatt, single nozzle Pelton turbine/generating unit; and (3) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 2,135 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts.	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (e.g., CD14–5) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

Dated: November 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27043 Filed 11–12–13; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2013).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9902–62–OEI]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2243.07; Procedures for Implementing the National Environmental Policy Act (NEPA) and Assessing the Environmental Effects Abroad of EPA Actions (Renewal); 40 CFR 6.301; was approved on 10/18/2013; OMB Number 2020–0033; expires on 10/31/2016; Approved with change.

EPA ICR Number 2080.05; Motor Vehicle and Engine Compliance Program Fees (Renewal); 40 CFR part 1027; was approved on 10/17/2013; OMB Number 2060–0545; expires on 10/31/2016; Approved without change.

EPA ICR Number 1844.06; NESHAP for Petroleum Refineries, Catalytic Cracking, Reforming and Sulfur Units; 40 CFR part 63 subparts A and UUU; was approved on 10/24/2013; OMB Number 2060–0554; expires on 10/31/2016; Approved without change.

EPA ICR Number 2379.02; Great Lakes Accountability System (Reinstatement); was approved on 10/24/2013; OMB Number 2005–0001; expires on 10/31/2016; Approved with change.

EPA ICR Number 1717.09; NESHAP for Off-Site Waste and Recovery Operations; 40 CFR part 63 subparts A and DD; was approved on 10/30/2013; OMB Number 2060–0313; expires on 10/31/2016; Approved without change.

EPA ICR Number 1869.07; NESHAP for the Manufacture of Amino/Phenolic Resins; 40 CFR part 63 subparts A and OOO; was approved on 10/30/2013; OMB Number 2060–0434; expires on 10/31/2016; Approved without change.

EPA ICR Number 1984.05; NESHAP for Plywood and Composite Wood Products; 40 CFR part 63 subparts A and DDDD; was approved on 10/30/2013; OMB Number 2060–0552; expires on 10/31/2016; Approved without change.

EPA ICR Number 0309.14; Registration of Fuels and Fuel Additives: Requirements for Manufacturers (Renewal); 40 CFR part 79 subpart B; 40 CFR 79.5; and 40 CFR part 79 subpart C; was approved on 10/30/2013; OMB Number 2060–0150; expires on 10/31/2016; Approved without change.

EPA ICR Number 0010.13; Information Requirements for Importation of Nonconforming Vehicles (Renewal); 19 CFR 12.73 and 12.74; and 40 CFR part 85 subparts P and R; was approved on 10/31/2013; OMB Number 2060–0095; expires on 10/31/2016; Approved without change.

Comment Filed

EPA ICR Number 2300.12; Greenhouse Gas Reporting Program (Proposed Rule); in 40 CFR parts 86, 89, 90, 94, 98, 600, 1033, 1039, 1042, 1045, 1048, 1051, 1054, and 1065; OMB filed comment on 10/30/2013.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2013–27054 Filed 11–12–13; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0335; FRL–9902–69–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Aerospace Manufacturing and Rework Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Aerospace Manufacturing and Rework Facilities (40 CFR Part 63, Subpart GG) (Renewal)'' (EPA ICR No. 1687.09, OMB Control No. 2060–0314) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through December 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 33409), on June 4, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 13, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0335, to: (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Respondents are owners or operators of aerospace manufacturing and rework operations. Respondents must submit one-time reports of initial performance tests and semiannual reports of noncompliance. Record keeping and parameters related to air pollution control technologies is required. The reports and records will be used to demonstrate compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Aerospace manufacturing and rework facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart GG).

Estimated number of respondents: 136 (total).

Frequency of response: Initially, semiannually, and occasionally.

Total estimated burden: 140,936 hours (per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $13,921,987 (per year), includes $136,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in respondent burden hours and an increase in Agency

hours in this ICR compared to the previous ICR; however, this is not due to any program changes. The changes are a result of several corrections; specifically, this ICR: (1) Corrects discrepancies in the number of compliance status reports and SSM reports between the respondent and the Agency burden tables; (2) corrects rounding errors in respondent burden Table 1b in the previous ICR; and (3) changes the frequency of reviewing semiannual reports from one to two for the Agency. This ICR also uses updated labor rates in calculating all costs, which results in an overall increase in burden costs.

Furthermore, this ICR corrects the number of responses to be consistent with the burden calculations. This results in an adjustment increase in the total number of responses.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–27056 Filed 11–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0346; FRL—9902–48–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving (40 CFR Part 63, Subparts LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP, and QQQQQQ) (Renewal)'' (EPA ICR No. 2256.04, OMB Control No. 2060–0598), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through December 31, 2013. Public comments were previously requested via the **Federal Register** (78 *FR* 33409) on June 4, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 13, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0346, to: (1) EPA online, using *www.regulations.gov* (our preferred method), by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: EPA established national emission standards for hazardous air pollutants (NESHAP) for seven area source categories. The requirements for two area source categories (Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication) are combined in one subpart. The standards include emissions limitations and work practice requirements for new and existing plants based on the generally available control technology or management practices (GACT) for each area source category. Potential respondents include 1 existing acrylic and modacrylic production facility, 2 existing chromium product manufacturing facilities, 500 existing flexible polyurethane foam production and fabrication facilities, 60 existing lead acid battery manufacturing facilities, and 393 existing wood preserving facilities. The total annual responses attributable to this ICR for existing sources are two one-time notifications; some existing facilities may be required to prepare a startup, shutdown, and malfunction plan, perform additional monitoring and recordkeeping, and/or conduct an initial performance test. The owner or operator of a new area source would be required to comply with all requirements of the General Provisions (40 CFR part 63, subpart A). No burden estimates are provided for new area sources because no new facilities are expected during the next 3 years.

Form Numbers: None.

Respondents/affected entities: Acrylic and modacrylic fibers production, carbon black production, chemical manufacturing: Chromium compounds, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving facilities

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP, and QQQQQQ)

Estimated number of respondents: 956 (total).

Frequency of response: Initially, semiannually, and occasionally.

Total estimated burden: 3,217 hours (per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $314,627 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an overall decrease in the respondent and Agency burden in this ICR compared to the most-recently approved ICR. The decrease in burden and cost estimates occurred because the standard has been in effect for more than three years and the requirements are different during initial compliance as compared to on-going compliance. The previous ICR reflected those burdens and costs

associated with initial activities such as submitting initial notifications, conducting performance tests, and establishing SSM plans. This ICR reflects the on-going burden and costs for existing facilities, including submitting semiannual reports. Note the standard does not impose regular reporting requirements for all subject area source sectors.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–27055 Filed 11–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0403; FRL–9902–67–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; EPA's Design for the Environment (DfE) Logo Redesign Consultations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted a new information collection request (ICR), ''EPA's Design for the Environment (DfE) Logo Redesign Consultations'' (EPA ICR No. 2487.01, OMB Control No. 2070–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Public comments were previously requested via the **Federal Register** (78 FR 44560) on July 24, 2013, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 13, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPPT–2013–0403, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oppt.ncic@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Pamela Myrick, Deputy Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Mail code: 7408–M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–554–1404; fax number: 202–564–8251; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: This information collection supports the consultation process by which the U.S. Environmental Protection Agency (EPA) will select a revised logo and messaging for its Design for the Environment (DfE) program. A key goal of the Agency's DfE program is to work with businesses to voluntarily incorporate safer chemicals and other health and environmental considerations into the design of their products and processes. To achieve this goal, DfE relies on outreach activities and information dissemination to industry participants and the public, as well as non-governmental organizations, EPA Regions, federal government laboratories, and state and local governments. Effective outreach and communications are vital to program success. The DfE program must ensure that its logo communicates clearly its safer chemistry and pollution prevention goals.

DfE's current logo has remained unchanged since the program began in 1992. The current DfE logo is dated and does not adequately convey and enable DfE's objective: To advance chemical-based products that are safer for people and the environment. A redesigned logo and messaging are needed to enhance communications and for the program to reach its potential. It is important for the redesign effort to be informed by consumers, manufacturing partners, retailers, and other key audiences.

To help ensure broad public participation in the redesign process and that EPA receives input from a diverse demographic, the Agency will conduct a number of focus group sessions to obtain feedback on several logo design concepts and associated wording. DfE will also sponsor two surveys to gauge public awareness and understanding of the logo and its meaning before and after the redesign.

Form Numbers: None.

Respondents/affected entities: Individual adult consumers who are members of the general population.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 8,990.

Frequency of response: On occasion.

Total estimated burden: 1,997 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $62,076 per year, includes $0 annualized capital or operation and maintenance costs.

Changes in the estimates: This is a new ICR.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–27058 Filed 11–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0313; FRL–9902–23–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Stationary Gas Turbines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for Stationary Gas Turbines (Renewal)'' (EPA ICR No. 1071.11, OMB Control No. 2060–0028), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through December 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 33409) on June 4, 2013, during a 60-day comment period. This notice allows

for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 13, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0313, to: (1) EPA online, using *www.regulations.gov* (our preferred method), by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

It is EPA's policy that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The NSPS for Stationary Gas Turbines were proposed on October 3, 1977, and promulgated on September 10, 1979. Owners and operators of stationary gas turbines must submit a one-time-only notification report of construction/reconstruction, modification, and startup date, initial performance test date, physical or operational changes, and demonstration of a continuous monitoring system. They also must provide a report on initial performance test result, monitoring results, and any excess emissions. Records must be maintained for the following topics: startups, shutdowns, and malfunctions; periods when the continuous monitoring system is inoperative; sulfur and nitrogen content of the fuel; fuel to water ratio; rate of fuel consumption; and ambient conditions. Semiannual reports are also required.

Form Numbers: None.

Respondents/affected entities: Stationary gas turbines.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart GG).

Estimated number of respondents: 535 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 68,447 hours (per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $6,695,243 (per year), which includes zero annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the number of affected facilities or the number of burden hours as currently identified in the OMB Inventory of Approved Burdens. However, there is an increase in the estimated labor costs for industry and a decrease in the estimated labor costs for the Agency when compared to the previous ICR. This is not due to any program changes. They are the result of updated industry labor rates, which resulted in an increase in industry labor costs; and of a mathematical correction to the Agency cost estimate in the previous ICR.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–27057 Filed 11–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9902–78–OA]

Notification of a Public Meeting of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the chartered SAB to: (1) Receive a briefing on ORD's research program; (2) conduct a quality review of a draft SAB report on recommendations for the Scientific and Technological Achievement Awards; (3) receive briefings on EPA climate science and research; and (4) discuss information provided by the EPA on actions in the semi-annual regulatory agenda and their supporting science.

DATES: The public meeting will be held on Wednesday December 4, 2013 from 10:30 a.m. to 5:00 p.m. and Thursday December 5, 2013 from 8:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voice mail (202) 564–2218, fax (202) 565–2098; or email at *nugent.angela@epa.gov.* General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background

The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the scientific and technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public meeting to discuss and deliberate on the topics below.

Briefing on ORD Research Program

The SAB and ORD's Board of Scientific Councilors (BOSC) provided a joint report to the Administrator in September 2012 entitled *Implementation of ORD Strategic Research Plans: A Joint Report of the Science Advisory Board and ORD Board of Scientific Counselors* (EPA–SAB–12–012). ORD will provide a briefing to update SAB members on recent ORD research efforts and plans to request advice from the SAB in 2014 on ORD's

implementation of its strategic research plans.

Quality Review of a Draft SAB Report on Recommendations for the Scientific and Technological Achievement Awards

The EPA has established Science and Technological Achievement Awards (STAA) to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer-reviewed journals. In response to a request from EPA's Office of Research and Development an SAB panel developed a draft report that makes recommendations concerning nominations to the Agency's FY 2013 STAA competition. Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/2013%20STAA%20Review?OpenDocument.*

At the December 4–5, 2013, meeting, the chartered SAB will conduct a quality review of the panel's draft report before it is transmitted to the EPA Administrator. The SAB quality review process ensures that all draft reports developed by SAB panels, committees or workgroups are reviewed and approved by the Chartered SAB before being finalized and transmitted to the EPA Administrator. These reviews are conducted in a public meeting as required by FACA.

Briefings on EPA Climate Science and Research

The chartered SAB has requested an informational briefing from the EPA to inform the SAB about EPA's Climate Action Plan and how the agency plans to support its regulations, programs, and policies with needed science. The SAB has requested this briefing so that the Board can: Better understand upcoming EPA climate-related actions; so that it can be prepared to provide future advice regarding agency climate science and research.

Discussion of Information Provided in the Agency's Semiannual Regulatory Agenda

As part of the EPA's effort to routinely inform the SAB about proposed and planned agency actions that have a scientific or technical basis, the agency provided notice to the SAB that the Office of Management and Budget published the ''Unified (Regulatory) Agenda'' on the Web on July 3, 2013 (*http://www.reginfo.gov/public/do/eAgendaMain*). During the December 3–4, 2013 meeting, the SAB will discuss whether it should provide advice and comment on the adequacy of the scientific and technical basis for EPA actions included in the Agenda. This discussion will replace SAB teleconferences originally announced for October 25, 2013 and October 30, 2013 (78 FR 59678) and subsequently cancelled as a result of the federal government shut down.

Availability of Meeting Materials: A meeting agenda and other materials for the meeting will be placed on the SAB Web site at *http://epa.gov/sab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the EPA's charge, meeting materials, or the group providing advice. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Persons interested in providing oral statements at the December 4–5, 2013, meeting should contact Dr. Angela Nugent, DFO, in writing (preferably via email) at the contact information noted above by November 29, 2013.

Written Statements: Written statements for the December 4–5, 2013, meeting should be received in the SAB Staff Office by November 29, 2013, so that the information may be made available to the SAB for its consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: either an electronic copy (preferred) via email (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format) or in hard copy with original signature. Submitters are asked to provide electronic versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Nugent at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: November 4, 2013.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2013–27141 Filed 11–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9902–84–ORD; Docket ID No. EPA–HQ–ORD–2013–0680]

Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period to January 13, 2014.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an extension of the public comment period for 60 days for the draft document titled, ''Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]'' (EPA/600/R–13/214A). The original **Federal Register** notice announcing the public comment period was published on September 30, 2013. At the request of the American Chemistry Council, the public comment deadline is extended to January 13, 2014. The draft document explores how new molecular, computational, and systems biology data can better inform risk assessment. This draft document is available for public review and comment and is undergoing independent external peer review. This draft document is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy

or views. The public comment period and the external peer review are separate processes that provide opportunities for all interested parties to comment on the document. When finalizing the draft document, EPA intends to consider the external peer reviewers' comments and any public comments that EPA receives in accordance with this notice.

DATES: The public comment period began on September 30, 2013, and is being extended to end on January 13, 2014. Technical comments should be in writing and must be received by EPA by January 13, 2014.

ADDRESSES: The draft ''Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]'' is available primarily via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *www.epa.gov/ncea.* A limited number of CD–ROM copies will be available from Ms. Marieka Boyd by phone: 919–541–0031; fax: 919–541–5078; or email: *boyd.marieka@epa.gov.* If you are requesting a CD–ROM copy, please provide your name, your mailing address, and the document title, ''Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]'' (EPA/600/R–13/214A) to facilitate processing of your request.

Comments may be submitted electronically via *www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.* For technical information, contact Dr. Lyle Burgoon, NCEA; telephone: 919–541–7808; facsimile: 919–685–3473; or email: *burgoon.lyle@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

The Next Generation (NexGen) Risk Assessment project was initiated in 2010 as a multi-year, multi-organization effort to consider new molecular, computational, and systems biology approaches for use in risk assessments. The specific aims of the NexGen effort, described in this draft document, are to: (1) Demonstrate proof of concept that the data and methods from recent advances in biology can inform risk assessment; (2) identify which of the information resources and practices are most useful for particular purposes (value of information); (3) develop decision considerations for use of different types of NexGen data and methods to inform different types of assessments; and (4) identify priority research needs.

The ''Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]'' presents the results and lessons learned from the prototypes/case studies for use of molecular, computational, and systems biology data in risk assessment. The prototype results demonstrated proof of concept for an integrated approach to incorporating molecular, computational, and systems biology data in risk assessment and considered various data types for specific assessment purposes. The lessons learned from this project suggested research needs and near- and longer-term implications of incorporating molecular, computational, and systems biology data in risk assessment.

II. Extension of Comment Period

The EPA is extending the deadline for submitting comments on the draft document ''Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]'' to January 13, 2014. The original deadline for comments was November 14, 2013. EPA's decision responds to a request from the American Chemistry Council to extend the comment deadline. The EPA believes that this extension will assist in providing an adequate amount of additional time for the public to review the draft document and to provide written comments.

III. How To Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2013–0680, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- Hand Delivery: The ORD Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2013–0680. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your

comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center home page at *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: November 5, 2013.

Debra B. Walsh,

Acting Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2013–27153 Filed 11–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9902–81—Region 4]

Availability of FY 12 Grantee Performance Evaluation Reports for the Eight States of EPA Region 4 and 17 Local Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; Clean Air Act Section 105 grantee performance evaluation reports.

SUMMARY: EPA's grant regulations require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of eight state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Georgia Department of Natural Resources; Commonwealth of Kentucky Energy and Environment Cabinet; Mississippi Department of Environmental Quality; North Carolina Department of Environment and Natural Resources; South Carolina Department of Health and Environmental Control; and Tennessee Department of Environment and Conservation) and 17 local programs (City of Huntsville Division of Natural Resources, AL; Jefferson County Department of Health, AL; Broward County Environmental Protection and Growth Management Department, FL; City of Jacksonville Environmental Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Miami-Dade County Air Quality Management Division, FL; Orange County Environmental Protection Division, FL; Palm Beach County Health Department, FL; Pinellas County Parks and Conservation Resources, FL; Louisville Metro Air Pollution Control District, KY; Forsyth County Environmental Affairs Department, NC; Mecklenburg County Land Use and Environmental Services Agency, NC; Western North Carolina Regional Air Quality Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Shelby County Health Department, TN; Knox County Department of Air Quality Management, TN; and Metropolitan Government of Nashville and Davidson County Public Health Department, TN). The 25 evaluations were conducted to assess the agencies' Fiscal Year 2012 performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street SW., Atlanta, Georgia 30303, in the Air, Pesticides and Toxics Management Division. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Marie Persinger (404) 562–9048 for information concerning the state and local agencies of Alabama and Kentucky; Artra Cooper (404) 562–9047 for the state and local agencies of Florida; Mary Echols (404) 562–9053 for the state agency of Georgia; Shantel Shelmon (404) 562–9817 for the state and local agencies of North Carolina; Angela Isom (404) 562–9092 for the state agencies of Mississippi and South Carolina; and Gwendolyn Graf (404) 562–9289 for the state and local agencies of Tennessee. They may be contacted at the Region 4 address mentioned in the previous section of this notice.

Dated: October 29, 2013.

Beverly H. Banister,

Acting Deputy Regional Administrator, Region 4.

[FR Doc. 2013–27151 Filed 11–12–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before December 13, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov<mailto:PRA@fcc.gov>* and

to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1092.

Title: Interim Procedures for Filing Applications Seeking Approval for Designated Entity Reportable Eligibility Events and Annual Reports.

Form Number: FCC Forms 609–T and 611–T.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for profit institutions; and State, Local and Tribal Governments

Number of Respondents: 1,100 respondents; 2,750 responses.

Estimated Time per Response: .50 hours to 6 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 4(i), 308(b), 309(j)(3) and 309(j)(4).

Total Annual Burden: 7,288.

Total Annual Cost: 2,223,375.

Privacy Impact Assessment: N/A.

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

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. There is no change in the reporting requirements.

FCC Form 609–T is used by Designated Entities (DEs) to request prior Commission approval pursuant to Section 1.2114 of the Commission's rules for any reportable eligibility event. The data collected on the form is used by the FCC to determine whether the public interest would be served by the approval of the reportable eligibility event.

FCC Form 611–T is used by DE licensees to file an annual report, pursuant to Section 1.2110(n) of the Commission's rules, related to eligibility for designated entity benefits.

The information collected will be used to ensure that only legitimate small businesses reap the benefits of the Commission's designated entity program. Further, this information will assist the Commission in preventing companies from circumventing the objectives of the designated entity eligibility rules by allowing us to review: (1) The FCC 609–T applications seeking approval for reportable eligibility events and (2) the FCC Form 611–T annual reports to ensure that licensees receiving designated entity benefits are in compliance with the Commission's policies and rules.

OMB Control Number: 3060–0110.

Title: Application for Renewal of Broadcast Station License, FCC Form 303–S; Section 73.3555(d), Daily Newspaper Cross-Ownership.

Form Number: FCC Form 303–S.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, Local or Tribal Governments.

Number of Respondent and responses: 3,821 respondents, 3,821 responses.

Obligation to Respond: Required to obtain benefits-Statutory authority for this collection of information is contained in Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Estimated Time per Response: 1.25–12 hours.

Frequency of Response: Every eight year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 10,403 hours.

Total Annual Costs: $3,886,358.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: FCC Form 303–S is used in applying for renewal of license for commercial or noncommercial AM, FM, TV, FM translator, TV translator, Class A TV, or Low Power TV, and Low Power FM broadcast station licenses. Licensees of broadcast stations must apply for renewal of their licenses every eight years.

This collection also includes the third party disclosure requirement of 47 CFR 73.3580. This rule requires local public notice of the filing of the renewal application. For AM, FM, Class A TV and TV stations, these announcements are made on-the-air. For FM/TV Translators and AM/FM/TV stations that are silent, the local public notice is accomplished through publication in a newspaper of general circulation in the community or area being served.

47 CFR 73.3555 is also included in this information collection. Section 73.3555 states that in order to overcome the negative presumption set forth in 47 CFR 73.3555(d)(4) with respect to the combination of a major newspaper and television station, the applicant must show by clear and convincing evidence that the co-owned major newspaper and station will increase the diversity of independent news outlets and increase competition among independent news sources in the market, and the factors set forth in 47 CFR 73.3555(d)(5) will inform this decision. (OMB approval was previously received for the information collection requirements contained in this rule section (waiver showings/filings)).

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2013–27096 Filed 11–12–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 11–42; DA 13–2016]

Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this Public Notice, the Wireline Competition Bureau (the Bureau), in conjunction with the Office of Managing Director (OMD), seeks to develop standard procedures for independent biennial audits of carriers drawing $5 million or more annually from the low-income program, by establishing uniform audit procedures

to review the internal controls and processes of the largest recipients of Lifeline support, which will increase oversight and prevent waste, fraud of abuse in the Lifeline program.

DATES: Comments are due on or before December 13, 2013. Reply comments are due on or before December 30, 2013.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 13, 2013 and reply comments on or before December 30, 2013. Comments are to reference WC Docket No. 11–42 and DA 13–2016 and 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 one of each filing. 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 8:00 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, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

In addition, we request that one copy of each pleading be sent to each of the following:

○ Garnet Hanly, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A346, Washington, DC 20554; email: *Garnet.Hanly@fcc.gov*; and

○ Charles Tyler Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov*.

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: Garnet Hanly, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418–0995 or TTY (202) 418–0484; or Gina Spade, Office of the Managing Director, at (202) 418–7105. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's Public Notice in WC Docket No. 11–42; DA 13–2016, released September 30, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com*.

I. Introduction and Summary

1. The Commission, in the *Lifeline Reform Order,* FCC 12–11, directed the Wireline Competition Bureau (WCB), in conjunction with the Office of Managing Director (OMD), to develop standard procedures for independent biennial audits of carriers receiving $5 million or more annually from the low-income universal service support program. By establishing uniform audit procedures to review the internal controls and processes of Lifeline service providers, WCB is implementing another major reform established by the Commission to protect the federal universal service fund (USF) from waste, fraud and abuse. We seek comment on the proposed Lifeline Biennial Audit Plan. The appendices to the Biennial Audit Plan are available for public inspection at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-2016A1.pdf* and FCC Headquarters at 445 12th St. SW., Washington, DC 20554.

2. Every eligible telecommunications carrier (ETC) providing Lifeline services and that receives $5 million or more from the USF annually must conduct a biennial audit. Each ETC that meets these requirements must hire an independent audit firm to assess the ETC's overall compliance with the Lifeline program's rules and requirements. The independent audit firms conducting the audits must be licensed certified public accounting firms and must conduct the audits consistent with Generally Accepted Government Auditing Standards (GAGAS). The audits shall be performed as agreed-upon procedures (AUP) attestations.

3. The Lifeline Biennial Audit Plan is intended to provide standard procedures for the independent auditors performing the AUP engagements, and focuses on the company's overall compliance and internal controls regarding the Commission's low-income program requirements as implemented on a nationwide basis. To maximize the administrative efficiency and benefit to the Commission of these audits, the Lifeline Biennial Audit Plan identifies the key risk areas and specific audit program requirements that the independent auditors must audit for compliance. Specifically, independent audits will review carrier processes and procedures related to: (1) Carriers' obligation to offer Lifeline; (2) consumer qualification for Lifeline; (3) subscriber eligibility determination and certification; and (4) annual recertification and recordkeeping.

4. WCB and OMD will review the comments filed in response to this Public Notice and issue a final Lifeline Biennial Audit Plan. Independent auditors must plan their engagements by using the approved procedures outlined in the Lifeline Biennial Audit Plan. In addition, to ensure compliance with the Commission's Lifeline requirements, the Universal Service Administrative Company will conduct training for independent auditors performing the AUP engagements to ensure that the audits are performed in accordance with the Lifeline Biennial Audit Plan. The independent auditors will be required to collect from the ETCs specific documents and completed questionnaires, which the independent auditors will inspect before conducting fieldwork testing and then preparing Attestation Reports.

II. Biennial Audit Plan

A. Introduction

5. The Wireline Competition Bureau (Bureau), in conjunction with the Office of Managing Director (OMD), sets forth the standard procedures for the Lifeline program biennial audits (audits).

6. As described in the Federal Communications Commission's (Commission's or FCC's) *Lifeline Reform Order,* the audits must be performed once every two years, unless otherwise directed by the Commission or Bureau. Every eligible telecommunications carrier (ETC or carrier) providing Lifeline services and receiving $5 million or more from the low-income program in the aggregate annually, as determined on a holding company basis taking into account all operating companies and affiliates, is subject to the biennial audit requirement. Each ETC that meets the requisite universal service fund (USF) support threshold for Lifeline support is required to hire an independent audit firm to assess the ETC's overall compliance with the Lifeline program's rules and requirements. The independent audit firms conducting the audits must be licensed certified public accounting (CPA) firms. These audits shall be conducted consistent with Generally Accepted Government Auditing Standards (GAGAS) and follow the audit guidelines described below.

7. Agreed-Upon Procedures Attestation Audit. In the *Lifeline Reform Order,* the Commission directed the Bureau and OMD to set out standards for ETCs that are engaging auditors to perform agreed-upon procedures (AUP) attestations. To that end, all hired auditors shall follow the standard procedures contained in this Biennial Audit Plan regarding ETCs' compliance with key Lifeline program requirements. If an auditor subsequently identifies an area of ambiguity regarding Commission requirements, the issue should be reported to the Universal Service Administrative Company (USAC), and if the ambiguity with Commission requirements continues (*e.g.,* USAC indicates the issue will require Commission guidance), the audit firm shall submit to the Commission any requests for rule interpretations necessary to complete the audit. In all instances where an auditor contacts USAC for guidance regarding Commission requirements, USAC will notify all outside auditors so that the issue in question will not be treated as a negative finding until guidance has been provided by USAC or the Bureau.

8. Focus of Audit. The Biennial Audit Plan is focused on an ETC's corporate-wide compliance rather than an ETC's performance on a specific day in a particular study area. In other words, the audits will focus on a company's overall compliance with the Lifeline rules and assess whether the company has internal controls necessary to comply with the Lifeline rules. For instance, when an ETC has an automated system to verify initial and ongoing eligibility, the audit should focus on whether the methods and procedures of such automated systems are appropriately structured to ensure compliance with Lifeline program rules and requirements. The Biennial Audit Plan also calls for sample testing in limited instances, to ensure that such policies, procedures and methods are being appropriately implemented as described below.

9. Submission of Attestation Report. Within 60 days after completion of the field work as described in the Fieldwork Testing Procedures section, but prior to finalization of the report, the third-party auditor shall submit a draft of the Attestation Report to the Commission and USAC. Comments to the draft report may be provided by the ETC to the audit firm prior to submission of the draft and final reports to the Commission and USAC. The Commission directs the audited ETCs to provide the Attestation Reports to the Commission, USAC, and relevant state and Tribal governments within 30 days of issuance of the final report, which is due no later than one year from release of the final Biennial Audit Plan, and biennially thereafter, unless otherwise directed by the Bureau. The Commission and USAC will be deemed authorized users of the reports.

B. Engagement Plan

10. Engagement Period. The AUP engagement shall cover 6 months of Lifeline service being offered by the ETC. The biennial audit scope may include all Low Income support disbursed from the USF by the Administrator, USAC, as detailed below.

11. Conditions of Engagement. Audits shall be performed in accordance with GAGAS issued by the Comptroller General of the United States (*as amended*) as an Agreed-Upon Procedures Attestation Engagement. The audit test period will be from November 1 through April 30 (hereinafter, the audit period). The audit firm leading the AUP engagement shall be a licensed CPA firm. All members of the team performing the engagement shall be familiar with the GAGAS standards established for an Agreed-Upon Procedures Attestation Engagement, have a sufficient general understanding of the relevant Commission's Lifeline program rules and requirements, as reflected in Compliance Requirements section and the requirements for and objectives of the AUP engagement. The team performing the engagement shall also be independent as defined by the GAGAS. The audit firm shall disclose in its engagement letter to the carrier how the audit team will comply with the GAGAS independence requirements.

12. In addition, to the extent that the auditor determines that procedures included in this Biennial Audit Plan are unclear with respect to any Commission rules and requirements, the audit firm shall contact USAC, and submit to the Commission any requests for rule interpretations necessary to complete the audit. If the audit firm identifies or becomes aware of any situation that indicates waste, fraud, or abuse of the Lifeline program or of any other USF program while performing the audit, the audit firm has an obligation to immediately notify the Commission and USAC, as required by GAGAS paragraphs 5.58 and 5.59.

13. For all references in this document to send information to USAC, please send to Karen Majcher, USAC Vice President, High Cost & Low Income Division at *LifelineBiennial@usac.org.* For all references in this document to send information to the Bureau and/or Commission, please send to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–B521, Washington, DC 20554; email: *Charles.Tyler@fcc.gov.* Any changes to contact information will be published in a public notice.

14. The auditor's use of internal auditors/employees provided by the ETC shall be limited to the provision of general assistance and the preparation of schedules and gathering of data for use in the engagement. Under no circumstances shall the internal auditors of the ETC subject to the engagement perform any of the procedures contained in this document.

15. Engagement Process. The general standard procedures contained herein are intended to identify areas of audit work coverage and uniformity of audit work among each audit firm performing the engagement. The standards identified throughout this document are not legal interpretations of any rules or requirements. To the extent that these standards or procedures conflict with any Commission rules and requirements, the audit firm should contact USAC to seek guidance as stated in the Conditions of Engagement section.

16. Upon engagement by an ETC, the audit firm shall plan the engagement by using the procedures as listed in the Audit Planning section below. The section requires the audit firm to gain an understanding of the applicable rules that will be used to test compliance, which are listed in Appendix G. USAC

will conduct training for auditors performing the AUP engagements to ensure that the audits are performed in accordance with the Biennial Audit Plan. The audit firm will perform the planning procedures to help in gaining an understanding of how the ETC complies with applicable requirements. The Audit Planning section of this Biennial Audit Plan includes a list of items the ETC shall provide to the auditor to begin fieldwork testing. The auditor, however, can request additional documentation from the ETC during the course of the audit in response to information collected in Appendices B and C.

17. The specific audit objectives and procedures for compliance testing for applicable rules are provided in the Fieldwork Testing Procedures section. The audit firm is expected to complete and report on all applicable procedures except where noted. Certain procedures pertain to ETCs offering Lifeline universal service support to subscribers on Tribal lands. If the ETC does not receive any Tribal support, those procedures should be omitted.

18. Upon completion of the Fieldwork Testing Procedures, the audit firm will draft an Attestation Report in the format detailed in the Attestation Report section. The reporting section describes the process for issuing draft and final reports.

19. Timetables. In order to complete the engagement in a timely manner, the following time schedule for completion of certain tasks is provided:

(a) Within 60 days after completion of the fieldwork as described in the Fieldwork Testing Procedures section, but prior to finalization of the report, the independent auditor shall submit a draft of the Attestation Report to the Commission and USAC. ETCs have the option of submitting comments in response to the findings noted in the draft report.

(b) Comments to the draft Attestation Report may be provided by the Commission, USAC or the ETC to the audit firm prior to submission of the final report.

(c) The final Attestation Report shall be filed with the Commission and USAC no later than one year after release of this Biennial Audit Plan, and biennially hereafter unless otherwise specified by the Bureau.

(d) The audited entity shall provide the Attestation Report to the Commission, USAC and relevant state and Tribal governments within 30 days of issuance of the final report. The Commission and USAC shall be deemed authorized users of such reports.

20. Attestation Report. Consistent with the GAGAS standards for AUP engagements, the audit firm must present the results of performing the procedures in the form of findings, as appropriate and detailed within the Fieldwork Testing Procedures section, resulting from application of the procedures. The presentation of findings related to each of the specified procedures shall include sufficient detail and specificity that a reader may draw a reasonable conclusion as to whether the respective objective has or has not been met. The audit firm must avoid vague or ambiguous language in reporting the findings and shall describe in the draft and final reports all instances of noncompliance with applicable Commission rules or its related implementing orders that were noted by the audit firm in the course of the engagement, or that were disclosed by the ETC during the engagement and not covered by the performance of these procedures. Where samples are used to test data, the report shall identify the size of the sample, and results from testing the procedures. The draft and final reports shall list the procedures with the results of the test-work performed, and any related findings, the ETC's responses to the findings, and if applicable, the audit firm's reply comments. Upon request by the Commission or USAC, the auditor shall provide its work papers. If there are no findings, the audit firm must indicate such by stating, ''No Exceptions Noted.'' The auditor's report must also contain the following elements:

(a) A title that includes the word independent;

(b) Identification of the specified parties in the engagement;

(c) Identification of the subject matter (or the written assertion related thereto) and the character of the engagement;

(d) Identification of the FCC, USAC, and the ETC as the responsible parties;

(e) A statement that the procedures performed were those contained in this document or as directed by the Bureau, as specified in Conditions of the Engagement section;

(f) A statement that the AUP attestation engagement was conducted in accordance with attestation standards established by the Government Accountability Office;

(g) A statement that the sufficiency of the procedures is solely the responsibility of the specified parties and a disclaimer of responsibility for the sufficiency of those procedures;

(h) A list of the procedures performed, the results of the testwork performed, and any related findings, the ETC's responses to the findings, and if applicable, the audit firm's reply comments;

(i) A statement that the audit firm was not engaged to and did not conduct an examination of the subject matter, the objective of which would be the expression of an opinion, a disclaimer of opinion on the subject matter, and a statement that if the practitioner had performed additional procedures, other matters might have come to his or her attention that would have been reported;

(j) A statement that this report becomes a matter of public record when the audit firms file the final report with the FCC; and

(k) A description of any limitations imposed on the audit firm by the carrier or any other affiliate, or other circumstances that might affect the audit firm's findings.

21. The report must *NOT* include any subscriber phone numbers, names, addresses, birthdates, social security numbers, tribal identification numbers, or any other personally identifiable information or customary proprietary network information.

22. Audit Planning. To initiate the audit, the audit firm shall use the following documents to plan the audit engagement: (1) The Requested Documents (Appendix A); (2) Background Questionnaire (Appendix B); and (3) Internal Control Questionnaire (Appendix C). These documents should be provided to the ETC with the audit announcement. For Appendix A, Item 1, the audit firm shall randomly select one month during the audit period to test all of the carrier's study areas (*i.e.,* the same month must be selected for each study area).

23. Upon receipt and review of completed questionnaires and submission of the Requested Documents, the audit firm will then provide Requested Documentation Form 555 & One-Per-Household Worksheet Sample (Appendix D) and Requested Documentation: Subscriber Sample (Appendix E) to the ETC so that the ETC can provide the additional documentation necessary to complete the procedures. The Requested Documentation: USAC Program Management (Appendix F) will be sent to USAC so that USAC can provide data to the audit firm for testing. As part of engagement, the audit firm shall:

(a) Inspect the completed Background Questionnaire and note in the Attestation Report any areas that are not in compliance with the FCC Lifeline rules set forth in Appendix G.

(b) Inspect the completed Inspect the completed Internal Control Questionnaire and note in the

Attestation Report any questions that were vague, not answered, or answered other than ''Yes'' and any comments provided by the ETC.

24. Representation Letters. The audit firms shall obtain two types of representation (assertion) letters. The first type of representation letter shall address all items of an operational nature (Operational Representation Letter). The second type of representation letter shall address applicable Commission rules and requirements as detailed below (Compliance Representation Letter). The following paragraphs detail the contents of each type of representation letter.

25. The Operational Representation Letter shall be signed by the Chief Operating Officer, or the equivalent, of the audited entity and shall include the following:

(a) The audited entity has made available all records in its control, as a participant in the Lifeline program under the federal USF, necessary to successfully execute the Lifeline agreed-upon procedures attestation engagement.

(b) Carrier is responsible for complying, and has complied, with requirements relating to 47 CFR Part 54 Subparts B and E of the Commission rules governing the administration of the USF for the Lifeline Program.

(c) Pursuant to Commission's Lifeline rules, the audited entity has only received reimbursement for each qualifying low-income consumer served, and that the reimbursement amount equals the federal support amount, including amounts described in 47 CFR 54.403(a) and (c).

(d) The audited entity has no knowledge of any fraud or suspected fraud by management/employees of the ETC related to the administration of the Lifeline Program.

(e) The audited entity has responded fully to all inquiries submitted by the auditor in the agreed-upon procedures attestation engagement.

(f) The audited entity has reviewed the draft Attestation Report findings and management letter comments, where applicable, and concur that all non-compliance identified therein are included in the reports or management letters.

(g) The audited entity has no knowledge of any events subsequent to the period of the subject matter being reported on that would have a material effect on the subject matter, or more specifically, the report opinions provided by the auditor, except as has been disclosed.

(h) There have been no notices of action from state or federal regulatory agencies, including the Federal Communications Commission or state public utilities commission that would affect the subject matter, or, more specifically, the report observations provided by the audit firm.

26. The Compliance Representation Letter shall be signed by the Chief Operating Officer, or the equivalent, of the audited entity and shall include the following:

○ Report of Management on Compliance with Applicable Requirements of 47 CFR Part 54 of the Federal Communications Commission's Rules, Regulations and Related Orders.

○ Management of (name of telecommunications carrier) is responsible for ensuring that the carrier is in compliance with applicable requirements of the Federal Communications Commission (FCC) rules at 47 CFR 54.101, 54.201, and 54.400–54.417 as well as related FCC Orders.

○ Management has performed an evaluation of the carrier's compliance with the applicable requirements of FCC rules at 47 CFR 54.101, 54.201, and 54.400–54.417, and related FCC Orders with respect to providing discounts to eligible low income consumers and seeking reimbursement from the Universal Service Fund (USF) during the period November 1, 20XX through April 30, 20XX (audit period).

The Carrier makes the following assertions with respect to the provision of Lifeline service during the audit period:

(A) Carrier Obligation to Offer Lifeline—the (name of Telecommunications Carrier) asserts that it:

(1) Is an eligible telecommunications carrier (ETC) (47 CFR 54.201(a); *Definition of eligible telecommunications carriers, generally,* which discusses carrier eligibility) and provides the services required for eligibility (§ 54.101(a): *Services designated for support,* and (b) of the Commission's rule: *Requirement to offer all designated services;* which describe the services that an eligible carrier must offer to receive federal universal service support)

(2) Makes available Lifeline service, as defined in § 54.401 of the Commission's rules, to qualifying low-income consumers (47 CFR 54.405(a): *Carrier obligation to offer lifeline,* which discusses carriers' obligations to offer, publicize, notify and allow lifeline services)

(3) Publicizes the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service. (47 CFR 54.405(b): *Carrier obligation to offer lifeline.*) (47 CFR 54.201(d)(2): *Definition of eligible telecommunications carriers, generally,* which requires the advertising of the availability of services)

(4) Indicates on all materials describing the service, using easily understood language, that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household. For the purposes of this section, the term ''materials describing the service'' includes all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms. (47 CFR 54.405 (c): *Carrier obligation to offer lifeline.*)

(5) Discloses the name of the eligible telecommunications carrier on all materials describing the service. (47 CFR 54.405(d): *Carrier obligation to offer lifeline.*)

(B) Consumer Qualification for Lifeline—the (name of Telecommunications Carrier) asserts that it: Maintains policies and procedures that are effectively implemented to review and certify consumer eligibility for Lifeline, and Toll Limitation services. (47 CFR 54.409: *Consumer Qualification for Lifeline,* which discusses the certification and verification requirements) This includes that an officer of the carrier:

○ Asserts that the carrier has implemented policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services. (47 CFR 54.410: *Subscriber eligibility determination and certification,* which also requires compliance with state certification procedures to document consumer eligibility)

(C) Submission of Lifeline Worksheet (Form FCC 497)—the (name of Telecommunications Carrier asserts that it: Submitted properly completed FCC Forms 497 for each month, representing discounts actually provided to subscribers, for the audit period, and has the required supporting documentation for the number of subscribers, rates and other information provided on the Form (47 CFR 54.407: *Reimbursement for offering Lifeline,* which discusses carrier reimbursement for providing Low Income Program support and requires the carrier to keep accurate records in the form directed by USAC and provide the records to USAC)

(D) General Recordkeeping and Annual Certification Requirements—the

(name of Telecommunications Carrier) asserts that:

(1) It maintains records to document compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Notwithstanding the preceding sentence, eligible telecommunications carriers must maintain the documentation required in § 54.410(d) and (f) of the Commission's rules for as long as the subscriber receives Lifeline service from that eligible telecommunications carrier. (47 CFR 54.417(a))

(2) If it provides Lifeline discounted wholesale services to a reseller, it must obtain a certification from that reseller that it is complying with all Commission requirements governing the Lifeline and Tribal Link Up program. (47 CFR 54.417(b))

(3) Complied with the annual certifications by eligible telecommunication carriers. (47 CFR 54.416, 54.522)

○ Dated [Date], 20XX

○ Name: Official or Owner of Carrier and, if applicable CFO or Senior Official responsible for Accounting or USF Compliance

27. Sampling. Certain procedures may require testing on a sample basis. To test compliance with certain key risk areas, the auditor will randomly select one month during the audit period and request the ETC to submit a subscriber list which will include all Lifeline subscribers for whom it requested reimbursement using the FCC Form 497s for that selected month (collectively, National Subscriber List). The auditor will randomly select subscribers from the National Subscriber List for the applicable procedures as described in the Fieldwork Testing Procedures section. To test compliance with other key risk areas, the auditor will randomly select a certain number of subscribers and request additional documentation (certification forms, re-certification forms, re-certification notice, termination notice, etc.) as described in the Fieldwork Testing Procedures section.

C. Fieldwork Testing Procedures

Objective I

28. Carrier Obligation to Offer Lifeline. To determine if the ETC has procedures in place to make Lifeline services available to qualifying low-income consumers with mandated disclosures regarding requirements to participate in the Lifeline program, and procedures for de-enrolling subscribers when they are no longer eligible to receive Lifeline services.

29. Standards. The Commission has adopted rules, set forth in 47 CFR 54.405, requiring carriers to make available Lifeline services to qualifying low-income consumers using marketing materials that describe the service. For purposes of this rule, the term ''marketing materials'' includes materials in all media, including but not limited to print, audio, video, and Internet (including email, web, and social networking media) that describe the Lifeline-supported service offering, including application and certification forms. The Commission has also established requirements for de-enrollment where a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under § 54.405 of the Commission's rules.

30. Procedures:

(1) Inquire of management and obtain carrier policies and procedures in response to Item 4 of Appendix A (Requested Documents) for offering Lifeline service to qualifying low-income consumers. Examine the carrier policies and procedures, and compare management responses and carrier policies and procedure with the Commission's Lifeline rules set forth in Appendix G. Note any discrepancy between the policies and procedures and the Commission's rules.

(2) Inspect 10 examples of carrier marketing materials describing the Lifeline service (*i.e.,* print, audio, video and web materials used to describe or enroll in the Lifeline service offering, including standard scripts used when enrolling new subscribers, application and certification forms), as provided in response to Items 4, 6 and 7 of Appendix A and note if the materials do not include the following:

a. The service is a Lifeline service, which is a government assistance program;

b. The service is non-transferable;

c. Only eligible subscribers may enroll;

d. Only one Lifeline discount is allowed per household; and

e. The ETC's name or any brand names used to market the service. If all of the examples do not include this required information, identify and note the specific element(s) that are missing from each example.

(3) Monitor 10 random incoming calls to telephone number(s) used as customer care for the Lifeline program, as provided in response to Item 8 of Appendix A. Note whether: (1) The telephone number(s) involve the use of interactive voice response (IVR) system; (2) a live customer care operator is available; and (3) and the time spent using the customer care telephone service. Also note whether the customer care telephone number(s) can be used by subscribers to notify the ETC of the subscriber's intent to cancel service or give notification that the subscriber is no longer eligible to receive service.

(4) Inspect applicable policies and procedures regarding de-enrollment from the program, including when the ETC will de-enroll subscribers based on lack of eligibility, duplicative support, non-usage, and failure to recertify, as further described below.

a. Inspect the ETC's policy and procedures for de-enrollment where the ETC has information indicating that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under 47 CFR 54.409, as provided in response to Item 4 of Appendix A. Note whether the policy and procedures detail the process for communications between the subscriber and ETC regarding de-enrollment, including, but not limited to: (1) Notifying subscribers of impending termination of service; (2) allowing subscriber to demonstrate continued eligibility; and (3) termination of service for failure to demonstrate eligibility. Identify any areas that are not in compliance with § 54.405(e)(1) of the Commission's rules.

b. Inspect the carrier's policy and procedures for de-enrolling subscribers that are receiving Lifeline service from another ETC or where more than one member of a subscriber's household is receiving Lifeline service (duplicative support). Note if the policy and procedures state that the ETC will de-enroll subscribers within five business days of receiving notification from USAC program management that a subscriber or a subscriber's household is receiving duplicative Lifeline support, as required by § 54.405(e)(2) of the Commission's rules.

c. Inspect the carrier's policy and procedures for de-enrolling subscribers for non-usage (*i.e.,* where a Lifeline subscriber fails to use Lifeline service for 60 consecutive days). Using the list provided in response to Item 10 in Appendix A perform the following:

(i) For accounts listed as de-enrolled or scheduled for de-enrollment, select a sample of at least 10 accounts and request copies of the non-usage termination notifications sent to the subscribers.

(ii) Examine the non-usage termination notifications to verify if the termination notifications explain that

the subscriber has 30 days following the date of the impending termination notification to use the Lifeline service. Note if any of the non-usage termination notifications do not include this information, as required by § 54.405(e)(3) of the Commission's rules.

(iii) Attach a sample non-usage termination notification(s).

d. Review the carrier's policy and procedures for de-enrolling a Lifeline subscriber that does not respond to the carrier's attempts to obtain re-certification, as part of the annual eligibility re-certification process. For any subscribers identified in Item 9.i, j and m of Appendix A, select a random sample of at least 30 and request copies of the notice of impending de-enrollment letters and all other communications sent to the subscribers involving recertification and perform the following:

(i) Inspect the sampled notice of impending de-enrollment letters and any other communications sent to the subscriber regarding re-certification to verify if the communications explain that the subscriber has 30 days following the date of the notice of impending de-enrollment letter to demonstrate continued eligibility or the carrier will terminate the subscriber's Lifeline service. Note if any of the impending de-enrollment letters do not include this information.

(ii) Review the de-enrollment letters, and other forms of communications, and the carrier's responses to the background questionnaire and verify through observation that the de-enrollment letters, if that form of communication was used, were sent by a method separate from the subscriber's bill (if a customer receives a bill from the carrier).

(iii) Attach a random sample of at least 5 examples of the impending de-enrollment letters to this procedure, and attach other form of communications provided to the carrier.

Objective II

31. Consumer Qualification for Lifeline. To determine if the ETC has procedures in place to limit Lifeline service to qualifying low-income consumers and ensure that Lifeline service is limited to a single subscription per household.

32. Standards. The Commission has adopted rules, set forth in 47 CFR 54.409, establishing eligibility criteria for consumers to be qualified to receive Lifeline services and limiting Lifeline support to a single subscription per household. The Commission has also adopted rules, set forth in 47 CFR 54.407 establishing that universal service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier, based on the number of qualifying low-income consumers it serves.

33. Procedures:

(1) Inquire of management and obtain carrier policies and procedures for limiting Lifeline support to a single subscription per household as provided by the carrier in response to Item 4 of Appendix A. Examine the policies and procedures. Compare management responses and carrier policies and procedures with the Commission's Lifeline rules set forth in § 54.409(c) of the Commission's rules (Appendix G). Note any discrepancies between the policies and procedures and the Commission's rule.

(2) Obtain the National Subscriber List in response to Item 1 of Appendix A. Obtain the carrier's Form 497(s) for each study area for the selected month as provided by USAC in response to Item 1 of Appendix F. Examine the number of subscribers claimed on the Form(s) 497. Compare the number of subscribers reported on the Form 497(s) to the number of subscribers contained on the National Subscriber List for each study area. Note any discrepancies in the number of subscribers.

(3) Using computer-assisted audit techniques, examine the National Subscriber List and note if there are any:

a. Duplicate phone numbers;

b. Duplicate addresses, same subscribers (same name, birth date, and last four of Social Security Number);

c. Duplicate addresses, different subscribers;

d. P.O. Boxes;

e. Blanks or missing data; and

f. Unusual notations (*e.g.,* N/A, symbols, etc.).

Note: In the final report, only state the number of instances noted for each test item above. For example, in the final report, note the number of duplicate phone numbers, but do NOT include the actual phone number.

(4) From the testwork completed in paragraph 33. 3) c. above, examine the list of duplicate addresses for different subscribers. Randomly select up to 30 of the duplicate addresses and perform the following: Request copies from the ETC of the one-per-household certification form for each of the selected duplicate addresses. Verify at least one subscriber from the duplicate addresses certified to only receiving one Lifeline-supported service in his/her household using the one-per household worksheet. Note the number of missing or incomplete certifications.

Objective III

34. Subscriber Eligibility Determination and Certification. To determine if the ETC implemented policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services.

35. Standards. The Commission has adopted rules, set forth in 47 CFR 54.409 and 54.410, that require ETCs to implement policies and procedures for ensuring that their subscribers are eligible to receive Lifeline services.

36. The Commission's rules, set forth in 47 CFR 54.409, include requirements for determining whether a consumer is qualified to receive Lifeline service. Pursuant to these rules: (1) The consumer's household income as defined in § 54.400(f) of the Commission's rules must be at or below 135% of the Federal Poverty Guidelines for a household of that size; (2) the consumer, one or more of the consumer's dependents, or the consumer's household must receive benefits from one of the qualifying federal assistance programs; or (3) the consumer must meet additional eligibility criteria established by a state for its residents, provided that such-state specific criteria are based solely on income or other factors directly related to income.

37. Procedures:

(1) Inquire of management and obtain carrier policies and procedures for ensuring that its Lifeline subscribers are eligible to receive Lifeline services as provided by the carrier in response to Item 4 of Appendix A. Examine the policies and procedures. Compare management responses and carrier policies and procedures with the Commission's Lifeline rules set forth in § 54.410 of the Commission's rules (Appendix G). Note any discrepancies between the policies and procedures and the Commission's rule.

a. Inspect the ETC's policies and look for evidence as to whether it includes a policy that the ETC does not retain copies of subscribers' proof of income- or program-based eligibility. Note in the Attestation Report if such a policy is not included.

b. Inspect the ETC's policies and look for evidence as to whether it includes a policy or procedure that the ETC must fully verify the eligibility of each low-income consumer prior to providing Lifeline service to that consumer, and that the ETC or its agents may not provide the consumer with an activated device intended to enable access to Lifeline service until that consumer's eligibility is fully verified and all other

necessary enrollment steps have been completed.

(2) Examine the ETC's policies and procedures for training employees and agents for ensuring that the ETC's Lifeline subscribers are eligible to receive Lifeline services, including any policies regarding how the company ensures employees and agents have completed the training. In the report, summarize the training requirements and ETC policies for ensuring employees and agents are trained on the rules for ensuring subscribers are eligible to receive Lifeline services and have completed all forms necessary to receive service. Include information provided regarding the timing, frequency and evidence of completion of the initial and any subsequent Lifeline subscriber eligibility and certification trainings required of the ETC's employees.

(3) Randomly select at least 100 subscribers from the National Subscriber List and for the first 50 of the sampled subscribers, the auditor will perform the test described below, for each of the subscriber's certification and recertification forms. After performing the tests described below for the first 50 sampled subscriber, if the error rate is higher than 5 percent, the auditor should apply the same procedure to the remaining 50 subscribers in the sample and record the results.

a. Examine the subscriber certification forms, if any, to verify the forms contain the following information:

(i) Lifeline is a federal benefit and that willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment or being barred from the program;

(ii) Only one Lifeline service is available per household;

(iii) A household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses;

(iv) A household is not permitted to receive Lifeline benefits from multiple providers;

(v) Violation of the one-per-household limitation constitutes a violation of the Commission's rules and will result in the subscriber's de-enrollment from the program;

(vi) Lifeline is a non-transferable benefit and the subscriber may not transfer his or her benefit to any other person;

(vii) Require each prospective subscriber to provide the following information:

(1) The subscriber's full name;

(2) The subscriber's full residential address;

(3) Whether the subscriber's residential address is permanent or temporary;

(4) The subscriber's billing address, if different from the subscriber's residential address;

(5) The subscriber's date of birth;

(6) The last four digits of the subscriber's social security number, or the subscriber's Tribal identification number, if the subscriber is a member of a Tribal nation and does not have a social security number;

(7) If the subscriber is seeking to qualify for Lifeline under the program-based criteria, as set forth in § 54.409 of the Commission's rules, the name of the qualifying assistance program from which the subscriber, his or her dependents, or his or her household receives benefits; and

(8) If the subscriber is seeking to qualify for Lifeline under the income-based criterion, as set forth in § 54.409 of the Commission's rules, the number of individuals in his or her household.

(viii) Require each prospective subscriber to certify, under penalty of perjury, that:

(1) The subscriber meets the income-based or program-based eligibility criteria for receiving Lifeline, provided in § 54.409 of the Commission's rules;

(2) The subscriber will notify the ETC within 30 days if for any reason he or she no longer satisfies the criteria for receiving Lifeline including, as relevant, if the subscriber no longer meets the income-based or program-based criteria for receiving Lifeline service, the subscriber is receiving more than one Lifeline benefit, or another member of the subscriber's household is receiving a Lifeline benefit.

(3) If the subscriber is seeking to qualify for Lifeline as an eligible resident of Tribal lands, he or she lives on Tribal lands, as defined in § 54.400(e) of the Commission's rules;

(4) If the subscriber moves to a new address, he or she will provide that new address to the ETC within 30 days;

(5) The subscriber's household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber's household is not already receiving a Lifeline service;

(6) The information contained in the subscriber's certification form is true and correct to the best of his or her knowledge,

(7) The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law; and

(8) The subscriber acknowledges that the subscriber may be required to re-certify his or her continued eligibility for Lifeline at any time, and the subscriber's failure to re-certify as to his or her continued eligibility will result in de-enrollment and the termination of the subscriber's Lifeline benefits pursuant to § 54.405(e)(4) of the Commission's rules.

(ix) Compare the ETC's subscriber eligibility criteria on the certification forms to the federal eligibility criteria listed in per 47 CFR 54.409. Note any discrepancies. Note: The ETC may list the eligibility criteria in its entirety or may allow the subscriber to note only his/her qualifying criterion on the form.

(x) Verify the subscriber completed all the required elements as identified in Objective III—3 a. above, including signature and initialing/checkbox requirements contained in the certification form.

(xi) Examine the subscriber's initial certification form to verify the initial certification form is dated prior to or on the same day as the Lifeline start date per the National Subscriber List.

(xii) If applicable, verify subscribers who received Tribal Lifeline support certified to residing on Tribal lands.

b. Review the list of the data source or documentation the ETC reviewed to confirm the subscriber's eligibility. Verify the recorded data sources are eligible data sources per 47 CFR 54.410, such as (1) income or program eligibility databases, (2) income or program eligibility documentation, or (3) confirmation from a state administrator.

Objective IV

38. Annual Certifications and Recordkeeping by Eligible Telecommunications Carriers. To determine if ETCs have made and submitted to the Universal Service Administrative Company the required annual certifications, under penalty of perjury, relating to the Lifeline program by an officer of the company and maintained recordkeeping requirements.

39. Standards. The Commission's rules, set forth in 47 CFR 54.416, 54.422, require that an officer of the company must certify that the ETC has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services and ETC is in compliance with all federal Lifeline certification procedures. ETCs must make this certification annually to USAC as part of the carrier's submission of recertification data pursuant to the Commission's rules.

40. The Commission also requires under its rules, set forth in 47 CFR 54.417, that it must maintain records to document compliance with all Commission requirements and state requirements governing the Lifeline program for the three full preceding

calendar years and must maintain the documentation required in § 54.410(d) and (f) of the Commission's rules for as long as the subscriber receives Lifeline service from that eligible telecommunications carrier, and provide the documentation to the Commission or USAC upon request.

41. Procedures:

(1) Inquire of management and obtain carrier policies and procedures for ensuring that the carrier has made and submitted the annual certifications required under §§ 54.416 and 54.422 of the Commission's rules, as provided in Item 12 of Appendix A. Examine the policies and procedures. Compare management responses and carrier policies and procedures with the Commission's Lifeline rules set forth in §§ 54.416 and 54.522 of the Commission's rules (Appendix G). Note any discrepancies between the policies and procedures and the Commission's rules.

(2) Examine the ETC's Form 555 that was filed during the audit period. Verify the carrier made all of the following certifications. An officer of each ETC must certify that s/he understands the Commission's Lifeline rules and requirements and that the carrier:

a. Has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services;

b. Is in compliance with all federal Lifeline certification procedures; and

c. In instances where an ETC confirms consumer eligibility by relying on income or eligibility databases, as defined in 47 CFR 54.410(b)(1)(i)(A) or (c)(1)(i)(A), the representative must attest annually as to what specific data sources the ETC used to confirm eligibility.

(3) Examine the ETC's organizational chart provided in response to Item 5 of Appendix A. Verify that the certifying officer on the Form 555 is an officer per the organizational chart or other publicly available documents.

(4) Verify that the subscriber count per the Form 555 agrees with the total subscriber count per the applicable Form 497. *Note: The Form 555 is completed by the carrier at the state level (not the study area level). If the carrier has two study areas in one state, the carrier must combine the results of both study areas and complete one Form 555 for that state.*

(5) Review the ETC's detailed recertification results of the individual subscribers reported on the Form 555, as provided in Item 9 of Appendix A. Verify that the data reported on the Form 555 agrees with the detailed recertification results.

(6) Review the ETC's detailed non-usage results of the individual subscribers reported on the Form 555, as provided in Item 10 of Appendix A. Verify that the data reported on the Form 555 agrees with the detailed non-usage results.

(7) Review the carrier's annual ETC certification, as provided in Item 13 of Appendix A. Verify that the ETC reported all the information and made all the certifications required by 47 CFR 54.422(a)(b).

(8) Review any supporting schedules related to the carrier's annual ETC certification, as provided in Item 13 of Appendix A. Verify that the data reported on the annual ETC certification agrees with the supporting schedules.

(9) Inquire of management and obtain carrier policies and procedures for maintaining records that document compliance with the Lifeline program rules, as provided by the carrier in response to Item 4 of Appendix A. Examine the policies and procedures. Compare the management responses and carrier policies with recordkeeping rules set forth in 47 CFR 54.417. Note any discrepancies between the policies and procedures and the Commission's rule.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

42. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Initial Regulatory Flexibility Analysis

43. As Required by the Regulatory Flexibility Act if 1980, as amended (RFA), the Wireline Competition Bureau (WCB), in conjunction with the Office of Managing Director (OMD), has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the procedures proposed in this Public Notice. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Public Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

a. Need for, and Objectives of, the Lifeline Biennial Audit Plan

44. The Public Notice seeks comment on the standard procedures for independent biennial audits of carriers drawing $5 million or more annually from the low-income universal service support program. We seek comment on any costs and burdens on small entities associated with the proposed Biennial Audit Plan., including data quantifying the extent of those costs or burdens.

b. Legal Basis

45. The Public Notice, including publication of proposed procedures, is authorized under sections 1,2, 4(i)–(j), 201(b), 254, 257, 303(r), and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended.

c. Description and Estimate of the Number of Small Entities to which the Proposed Biennial Audit Plan Will Apply:

46. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed Biennial Audit Plan. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small

governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

1. Wireline Providers

47. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. The Commission estimates that most providers of local exchange service are small entities, but a small percentage are impacted by the Biennial Audit Plan because it applies only to those entities that receive $5 million or more from the low-income program, on an annual basis, as determined on a holding company basis taking into account all operating companies and affiliates.

48. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Seventy of which have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities, but a small percentage are impacted by the Biennial Audit Plan because it applies only to those entities that receive $5 million or more from the low-income program, on an annual basis, as determined on a holding company basis taking into account all operating companies and affiliates.

49. Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that will not be affected by the Biennial Audit Plan because it applies only to those entities that receive $5 million or more from the low-income program, on an annual basis, as determined on a holding company basis taking into account all operating companies and affiliates.

50. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede 2002 Census data, show that there were 3,188 firms in this category that operated for the entire year. Of the total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities, but will not be impacted by the Biennial Audit Plan because it applies only to those entities that receive $5 million or more from the low-income program, on an annual basis, as determined on a holding company basis taking into account all operating companies and affiliates.

51. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities, but will not be impacted by the Biennial Audit Plan because it applies only to those entities that receive $5 million or more from the low-income program, on an annual basis, as determined on a holding company basis taking into account all operating companies and affiliates.

52. Toll Resellers. The SBA has developed a small business size

standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities, but will not be impacted by the Biennial Audit Plan because it applies only to those entities that receive $5 million or more from the low-income program, on an annual basis, as determined on a holding company basis taking into account all operating companies and affiliates.

53. Pre-paid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for pre-paid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these pre-paid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of pre-paid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of pre-paid calling card providers are small entities, but will not be impacted by the Biennial Audit Plan because it applies only to those entities that receive $5 million or more from the low-income program, on an annual basis, as determined on a holding company basis taking into account all operating companies and affiliates.

2. Wireless Carriers and Service Providers

54. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

55. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

56. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

57. Satellite Telecommunications Providers. Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

58. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities, but are unlikely impacted by the Biennial Audit Plan because it applies only to those entities that receive $5 million or more from the low-income program, on an annual basis, as determined on a holding company basis taking into account all operating companies and affiliates.

59. The second category, *i.e.,* ''All Other Telecommunications'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

60. Common Carrier Paging. The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The 2007 census also contains data for the specific category of ''Paging'' ''that is classified under the seven-number North American Industry Classification System (NAICS) code 5172101. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging Third Report and Order, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

61. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the *2008 Trends Report,* 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

3. Internet Service Providers

62. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

d. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. As part of the effort to reduce waste, fraud, and abuse in the low-income program, the Commission directed the Bureau, in conjunction with OMD, to finalize standard procedures for independent audits of carriers drawing $5 million or more annually from the program. The Commission limited this requirement to the largest recipients in the program, who pose the biggest risk to the program if they lack effective internal controls to ensure compliance with the Commission's rules. For the small percentage of, if any, small entities who meet this $5 million revenue threshold, we seek comment on how to minimize the burdens of such a requirement on small entities. Accordingly, we seek comment on the potential economic impact of these requirements.

e. Federal Rules That May Duplicate or Conflict With Proposed Rules

64. None.

C. Filing Requirements

65. Filing Requirements. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 13, 2013 and reply comments on or before December 30, 2013. Comments are to reference WC Docket No. 11–42 and DA 13–2016 and 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 one of each filing. 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 8:00 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, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

In addition, we request that one copy of each pleading be sent to each of the following:

- Garnet Hanly, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A346, Washington, DC 20554; email: *Garnet.Hanly@fcc.gov;* and
- Charles Tyler Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Federal Communications Commission.

Kimberly Scardino,

Division Chief, Telecommunication Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2013–27184 Filed 11–12–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, November 14, 2013 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Draft Advisory Opinion 2013–13: Freshmen Hold'em, Stutzman for Congress, Gardner for Congress 2012, Tom Reed for Congress, Denham for Congress, Benishek for Congress, Inc., Rodney for Congress, Duffy for Congress, Chris Gibson for Congress, Friends of Joe Heck, Friends of Dave Joyce, Pat Meehan for Congress, Scott Rigell for Congress, Rothfus for Congress, Jon Runyan for Congress, Inc., VoteTipton.com, Valadao for Congress, and Walorski for Congress, Inc. Joint Fundraising Committee.

Draft Advisory Opinion 2013–15: Conservative Action Fund;

Proposed Final Audit Report on the Arizona Republican Party (A11–21);

Final Determination on Entitlement to Primary Election Public Funds—Governor Gary Johnson, Gary Johnson 2012 Inc. (LRA# 905);

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2013–27198 Filed 11–8–13; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 2013.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *James Terill Wilson, individually, and in concert as a member of a family control group consisting of James T. Wilson, Jr., Sarah Wilson, James Terill Wilson IRA, James T. Wilson, Jr. Trust, Sarah Wilson Trust, James T. Wilson, Jr. Investment Trust, Sarah Wilson Investment Trust, all of Bronston, Kentucky, and Terry S. Wilson,* Russell Springs, Kentucky; to acquire voting shares of First Bancorp, Inc., Russell Springs, Kentucky, and thereby indirectly acquire voting shares of Citizens Bank & Trust Company, Campbellsville, Kentucky, and The First National Bank of Russell Springs, Russell Springs, Kentucky.

Board of Governors of the Federal Reserve System, November 7, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–27104 Filed 11–12–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of ETAC Meeting

TIME AND DATE: 10:00 a.m. November 18, 2013.

PLACE: 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Open to the Public

1. Approval of the Minutes of the April 22, 2013 Board Member Meeting
2. Report of the Executive Director on the Thrift Savings Plan status:
   a. Proposal to change the asset allocation within the L Funds to increase the G Fund vs. the F Fund
   b. Proposal to change the default from the G Fund to an age appropriate L fund
   c. Discussion of new Decision Intelligence initiative
   d. Briefing on the impact that furloughs and sequestration have had on TSP participants (i.e., spikes in loans/hardship withdrawals)
3. New Business

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: November 8, 2013.

James B. Petrick,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2013–27260 Filed 11–8–13; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Solicitation of Written Comments on Modifications of Healthy People 2020 Objectives

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) solicits written comments regarding new objectives proposed to be added to Healthy People 2020 since the fall 2012 public comment period, as well as written comments proposing new objectives to be included within existing Healthy People 2020 Topic Areas. Public participation helps shape Healthy People 2020, its framework, objectives, organization, and targets. Healthy People 2020 will provide opportunities for public input periodically throughout the decade to ensure Healthy People 2020 reflects current public health priorities and public input. The updated set of Healthy People 2020 objectives will be incorporated on *www.HealthyPeople.gov.* This set will reflect further review and deliberation by the Topic Area workgroups, Federal Interagency Workgroup on Healthy People 2020, and other Healthy People 2020 stakeholders.

DATES: Written comments will be accepted until 5:00 p.m. ET on December 4, 2013.

ADDRESSES: Written comments will be accepted via an online public comment database at *http://healthypeople.gov/2020/about/publicComment.aspx;* by mail at Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, Attn: Public Comment, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852; by fax to 240–453–8281; or by email to *HP2020@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Theresa Devine, MPH, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, *Theresa.Devine@hhs.gov* (email), 240–453–6112 (telephone), 240–453–8281 (fax).

SUPPLEMENTARY INFORMATION: For three decades, Healthy People has provided a comprehensive set of national 10-year health promotion and disease prevention objectives aimed at improving the health of all Americans. Healthy People 2020 objectives provide a framework by presenting a comprehensive picture of the nation's health at the beginning of the decade, establishing national goals and targets to be achieved by the year 2020, and monitoring progress over time. The U.S. Department of Health and Human Services (HHS) is soliciting the submission of written comments regarding new objectives proposed to be added to Healthy People 2020 since the fall 2012 public comment period.

Healthy People 2020 is the product of an extensive collaborative process that relies on input from a diverse array of individuals and organizations, both within and outside the federal government, with a common interest in improving the nation's health. Public comments were a cornerstone of Healthy People 2020's development. During the first phase of planning for Healthy People 2020, HHS asked for the public's comments on the vision, mission, and implementation of Healthy People 2020. Those comments helped set the framework for Healthy People 2020. The public was also invited to submit comments on proposed Healthy People 2020 objectives, which helped shape the final set of Healthy People 2020 objectives.

The public is now invited to comment on new objectives proposed to be added to Healthy People 2020. These new objectives were developed by Topic Area workgroups led by various agencies within the federal government. They have been reviewed by the Federal Interagency Workgroup on Healthy People 2020 and are presented now for the public's review and comment. The public is also invited to suggest additional objectives for consideration that address critical public health issues within existing Healthy People 2020 Topic Areas. All proposed new objectives must meet all of the objective selection criteria (see below).

Written comments will be accepted at *http://healthypeople.gov/2020/about/publicComment.aspx* during a three-week public comment period beginning in November 2013. The public will also be able to submit written comments via mail, fax, and email (see contact information above). Comments received in response to this notice will be reviewed and considered by the Topic Area workgroups, Federal Interagency Workgroup on Healthy People 2020, and other Healthy People 2020 stakeholders.

Objective Selection Criteria

The following nine criteria should be taken into consideration when commenting on the proposed or suggesting additional objectives.

1. The result to be achieved should be important and understandable to a broad audience and support the Healthy People 2020 goals.

2. Objectives should be prevention oriented and should address health improvements that can be achieved through population-based and individual actions, and systems-based, environmental, health-service, or policy interventions.

3. Objectives should drive actions that will work toward the achievement of the proposed targets (defined as quantitative values to be achieved by the year 2020).

4. Objectives should be useful and reflect issues of national importance. Federal agencies, states, localities, non-governmental organizations, and the public and private sectors should be able to use objectives to target efforts in schools, communities, work sites, health practices, and other environments.

5. Objectives should be measurable and should address a range of issues, such as: behavior and health outcomes; availability of, access to, and content of behavioral and health service interventions; socio-environmental conditions; and community capacity—directed toward improving health outcomes and quality of life across the life span. (Community capacity is defined as the ability of a community to plan, implement, and evaluate health strategies.)

6. Continuity and comparability of measured phenomena from year to year are important, thus, when appropriate, retention of objectives from previous Healthy People iterations is encouraged. However, in instances where objectives and/or measures have proven ill-suited to the purpose or are inadequate, new improved objectives should be developed. Whether or not an objective has met its target in a previous Healthy People iteration should not be the sole basis for retaining or archiving an objective.

7. The objectives should be supported by the best available scientific evidence. The objective selection and review processes should be flexible enough to allow revisions to objectives in order to reflect major updates or new knowledge.

8. Objectives should address population disparities. These include populations categorized by race/ethnicity, socioeconomic status, gender, disability status, sexual orientation, and geographic location. For particular health issues, additional special populations should be addressed, based on an examination of the available evidence on vulnerability, health status, and disparate care.

9. Healthy People 2020, like past versions, is heavily data driven. Valid, reliable, nationally representative data and data systems should be used for Healthy People 2020 objectives. Each objective must have (1) A data source, or potential data source, identified, (2) baseline data and (3) assurance of at least one additional data point throughout the decade.

Dated: November 7, 2013.

Don Wright,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2013–27126 Filed 11–12–13; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–13–13ZZ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806.

Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the SAMHSA PDMP Electronic Health Record (EHR) Integration and Interoperability Expansion Program—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2009, drug overdose deaths became the leading cause of injury death in the United States (U.S.), exceeding motor vehicle traffic crash deaths for the first time, a trend that continued in 2010. Prescription drugs, particularly opioid pain relievers, have been identified as the main driver of this increase. The number of overdose deaths per year involving opioid pain relievers increased more than four-fold from 1999 to 2010 (from 4,030 to 16,651), outnumbering overdose deaths involving all illicit drugs combined. Morbidity associated with opioid pain reliever abuse increased in parallel. The rate of emergency department visits associated with the misuse or abuse use of opioid pain relievers increased 153% from 2004 to 2011, while rates for illicit drugs remained largely stable.

This project involves an evaluation of the Substance Abuse and Mental Health Services (SAMHSA) Prescription Drug Monitoring Program (PDMP) Electronic Health Record (EHR) Integration and Interoperability Expansion Program (PEHRIIE) which has funded projects in nine states via cooperative agreements.

Under these cooperative agreements, the Centers for Disease Control and Prevention (CDC) is responsible for conducting a comprehensive process and outcomes evaluation of the PEHRIIE program. The primary goals of the qualitative evaluation component of this work are:

1. To understand the processes, challenges, and successes in implementing and sustaining integration of PDMP data with Health Information Technology (HIT) systems and interoperability of PDMP systems across states; and

2. To understand the experiences of clinical end users with the systems being upgraded under the PEHRIIE program and to capture their recommendations, if any, for how the goals of the PEHRIIE could have been better accomplished.

In order to achieve these evaluation goals, CDC requests OMB approval for 24 months in order for the CDC evaluation team to conduct qualitative interviews with those individuals involved in the planning and implementation of the PEHRIIE projects (i.e., key project staff and stakeholders) as well as with the clinical end users (i.e., prescribers and pharmacists) of the PDMPs in the states where these projects are taking place. Through this evaluation, CDC will better understand the impact of PDMP integration and interoperability in the funded states.

The total annual estimated burden hours for the planned qualitative information collection are 119 hours. Total burden time includes the time to conduct interviews with key project staff/stakeholders and clinical end users, and the time spent by recruiters at the PEHRIIE implementation sites to identify potential clinical end user interviewees.

Staff/stakeholder interviews will be conducted with key project staff members/stakeholders across the nine PEHRIIE-funded states. Interviews will also be conducted with key project staff/stakeholders representing companies working with multiples states involved in the PEHRIIE program.

End user interviews will be conducted at implementation sites distributed across all nine PEHRIIE states. The CDC will work with one recruiter per implementation site to complete these tasks.

There are no costs to respondents other than their time. The total estimated annual burden hours are 119 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
Key Project Staff/Stakeholders	Key Project Staff/Stakeholders Interview Guide	53	1	45/60
Clinical End Users	End Users Interview Guide	59	1	1
Clinical End User Recruiters	N/A	20	1	1

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–27083 Filed 11–12–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Review of Eating Disorders Dimensional Research (R01).

Date: December 3, 2013.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rebecca C Steiner, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: November 6, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–27094 Filed 11–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information on Alternative Skin Sensitization Test Methods and Testing Strategies and for Comment on ICCVAM's Proposed Activities

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) is developing a U.S. plan for the evaluation of alternative skin sensitization test methods and testing strategies. The National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) requests information that ICCVAM might use to develop this plan and comments on proposed ICCVAM activities.

DATES: Information should be submitted by December 9, 2013.

ADDRESSES: Responses submitted by email to *niceatm@niehs.nih.gov* are preferred. NICEATM, National Institute of Environmental Health Sciences, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709. Web site: *http://ntp.niehs.nih.gov/go/niceatm.*

FOR FURTHER INFORMATION CONTACT: Dr. Warren S. Casey, Acting Director, NICEATM; email: *warren.casey@nih.gov;* telephone: (919) 316–4729.

SUPPLEMENTARY INFORMATION:

Background: Allergic contact dermatitis (ACD), a skin reaction characterized by localized redness, swelling, blistering, or itching after direct contact with a skin allergen, is an important public health challenge. ACD frequently develops in workers and consumers exposed to skin-sensitizing chemicals and products. Pesticides and other marketed chemicals, including cosmetic ingredients, are routinely tested for skin sensitization hazard so that products can be appropriately labeled for safe use and handling. Fostering the evaluation and promotion of alternative test methods for regulatory use in skin sensitization hazard assessment has been one of ICCVAM's long-standing priorities (see *http://ntp.niehs.nih.gov/go/40445*).

Skin sensitization is a complex process. For substances that initiate the process through covalent binding to skin proteins, the key biological events have been fairly well characterized. These events form the basis for an ''adverse outcome pathway'' (AOP) for skin sensitization (OECD, 2012). An AOP is a conceptual model that links exposure to a substance to a toxic effect by identifying the sequence of biochemical events required to produce the toxic effect. The AOP for skin sensitization provides a framework for the development of alternative toxicity tests that can assess chemical effects on each biological event in the pathway and thereby provide evidence on whether a substance causes skin sensitization.

ICCVAM is committed toward continued work in this area and believes it has promise for the near-term development of testing strategies that do not require the use of animals. Specific ICCVAM or NICEATM activities include the following:

- ICCVAM consideration of a nomination from the National Institute of Occupational Safety and Health to assess the electrophilic allergen screening assay, a test method that identifies electrophilic substances that may produce skin sensitization by measuring their tendency to bind to skin proteins, the first key event in the AOP.
- NICEATM collaboration with academic scientists to develop and evaluate chemical structure—activity relationship (SAR) models to predict skin sensitization.
- NICEATM collaboration with industry scientists to develop an open-source Bayesian network as an operational framework for an integrated testing strategy that uses multiple physicochemical, *in silico, in chemico,* and *in vitro* inputs to predict skin sensitization properties of test substances.
- NICEATM evaluation of various high-throughput screening assays for skin sensitization in coordination with NIEHS Tox21 activities.

ICCVAM is also aware of significant international efforts to replace the use of animals in skin sensitization testing for hazard and potency assessment by government organizations including the Organisation for Economic Co-operation and Development (OECD) and the European Union Reference Laboratory for Alternatives to Animal Testing (EURL ECVAM), and by the industry organization Cosmetics Europe (formerly COLIPA). Some specific ICCVAM and NICEATM activities include:

- Providing expertise and advice to EURL ECVAM to support their evaluation of several *in chemico* or *in vitro* methods (the direct peptide reactivity assay, human cell line activation test, KeratinoSens^{SM}, and myeloid U937 skin sensitization test), which cover key events in the AOP for skin sensitization (Adler et al., 2011).
- Participation in the International Cooperation on Alternative Test Methods (ICATM, *http://ntp.niehs.nih.gov/go/40113*), through which ICCVAM and NICEATM help eliminate redundancy in validation studies sponsored by ICATM partners and promote harmonization in the resultant test method recommendations.
- Communication with trade associations and non-government organizations (e.g., Cosmetics Europe) to receive information regularly on efforts toward evaluation of alternative test methods for skin sensitization that cover key events in the AOP and data integration for hazard identification and potency assessment.

ICCVAM's Proposed Plans: ICCVAM's involvement with national and international efforts (see Background above) is consistent with its goal to advance the state of the science for alternative test methods and testing strategies for skin sensitization. ICCVAM is developing a plan of action to augment and support this goal and, as such, is considering the following activities:

- Holding implementation workshops and webinars, and developing guidance documents to promote the use of validated test methods and testing strategies for skin sensitization.
- Participating in OECD skin sensitization activities to ensure that new and relevant test guidelines and guidances meet U.S. regulatory requirements as well as foster cross-fertilization between domestic and international research efforts in skin sensitization.
- Participating in validation management groups sponsored by ICATM partner organizations to ensure that the relevant validation studies for skin sensitization test methods and strategies meet U.S. regulatory needs as well as those of the sponsoring country.
- Providing expertise, data, and other resources when feasible to support NICEATM's efforts in the development of an integrated testing strategy for skin sensitizers.
- Evaluating alternative test method and testing strategy submissions for skin sensitization for reliability and relevance for the intended purpose.
- Consulting with organizations that are currently developing alternative test methods and testing strategies for skin sensitization to provide guidance that will increase U.S. regulatory acceptance.

• Encouraging developers of alternative test methods and testing strategies for skin sensitization to discuss their projects with ICCVAM and NICEATM to facilitate refinement of the methods to meet U.S. regulatory needs.

• Communicating information about the availability of funding or other resources to stakeholders that are developing alternative test methods and testing strategies for skin sensitization.

• Conducting, cosponsoring, and/or participating in workshops to review the state of the science and soliciting or providing input for future activities on development and validation of test methods and testing strategies for skin sensitization.

Request for Comments: ICCVAM invites its stakeholders to consider the proposed activities identified above and provide comment on the following:

• The role that ICCVAM should play in the development and evaluation of alternative skin sensitization test methods and testing strategies.

• The potential contributions that regulated industries, nongovernment organizations, or other interested parties might make toward these efforts.

Request for Information: As noted above, ICCVAM is developing plans to augment and support activities that will advance the state of the science for alternative skin sensitization test methods and testing strategies. As part of this process, ICCVAM is interested in receiving information on the state of the science regarding alternative test methods and testing strategies for skin sensitization and about activities of which ICCVAM may not be aware.

Input Received: Information and comments in response to this notice can be submitted by email (*niceatm@niehs.nih.gov*). Persons should include their name, affiliation (if applicable), mailing address, telephone, email, and sponsoring organization (if any) with their communications. The deadline for receipt of the requested information is December 9, 2013. Responses to this notice will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/40498*) and persons submitting them will be identified by name and affiliation or sponsoring organization, if applicable. During development of its plan for advancing alternative skin sensitization test methods and testing strategies, ICCVAM will carefully consider the information and comments received in response to this notice and will also consult with ICATM partners and the OECD.

Responses to this request are voluntary. No proprietary, classified, confidential, or sensitive information should be included in responses. This request for input is for planning purposes only and is not a solicitation for applications or an obligation on the part of the U.S. Government to provide support for any ideas identified in response to the request. Please note that the U.S. Government will not pay for the preparation of any information submitted or for its use of that information.

Background Information on ICCVAM and NICEATM: ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability. ICCVAM also works to promote the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and that replace, reduce, or refine (enhance animal well-being and lessen or avoid pain and distress) animal use. NICEATM provides scientific and operational support for ICCVAM and conducts independent validation studies and other activities to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. ICCVAM and NICEATM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM and ICCVAM can be found on the NTP Web site at *http://ntp.niehs.nih.gov/go/niceatm* and *http://ntp.niehs.nih.gov/go/iccvam.*

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) provides the authority for ICCVAM and NICEATM involvement in activities relevant to the development of alternative test methods. The ICCVAM Authorization Act established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. As stated in the ICCVAM Authorization Act, ICCVAM acts to ensure that new and revised test methods are validated to meet the needs of Federal agencies, increase the efficiency and effectiveness and Federal agency test method review, and optimize utilization of scientific expertise outside the Federal Government.

References

Adler S, Basketter D, Creton S, et al. 2011. Alternative (non-animal) methods for cosmetics testing: current status and future prospects-2010. Arch Toxicol 85: 367–485.

OECD. 2012. OECD Series on Testing and Assessment No. 168. The Adverse Outcome Pathway for Skin Sensitisation Initiated by Covalent Binding to Proteins. Part 1: Scientific Assessment. Paris:OECD Publishing. Available: *http://www.oecd.org/env/ehs/testing/seriesontestingandassessmentpublicationsbynumber.htm.*

Dated: November 6, 2013.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2013–27095 Filed 11–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0194]

Navigation Safety Advisory Council

AGENCY: United States Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet December 3–4, 2013, in Portsmouth, Virginia to discuss matters relating to maritime collisions, rammings, groundings; Inland and International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems. The meeting will be open to the public.

DATES: NAVSAC will meet Tuesday, December 3, 2013, from 8 a.m. to 5 p.m., and Wednesday, December 4, 2013, from 8 a.m. to 1 p.m. Please note that the meeting may close early if the Council has completed its business. Written comments are due by November 26, 2013.

ADDRESSES: The meeting will be held at the Renaissance Portsmouth Hotel and Convention Center, 425 Waters Street, Portsmouth, Virginia 23704. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Burt Lahn listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the council prior to the formulation of recommendations as listed in the ''Agenda'' section below.

You may submit written comments no later than November 26, 2013, and must

be identified by USCG–2013–0194 using one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing). Simply enter ''USCG–2013–0194'' in the ''SEARCH'' field, click on <SEARCH>, then click on <COMMENT NOW> next to the Meeting Announcement.

• *Fax:* 202–493–2251.

• *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: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov.* Simply enter ''USCG–2013–0194'' in the ''SEARCH'' field, click on <SEARCH>, click on <Open Docket Folder> next to the Meeting Announcement, then click on the title of any comment you wish to review.

A public comment period will be held during the meeting on December 3, 2013, from 3:00 p.m. to 4:00 p.m. and December 4, 2013, from 11:00 a.m. until the close of the meeting. Public presentations may also be given. Speakers are requested to limit their presentation and comments to 10 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. To register as a speaker, contact Mr. Burt Lahn listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions about this meeting, please contact Mr. Mike Sollosi, the NAVSAC Alternate Designated Federal Officer (ADFO), by telephone at 202–372–1545 or via email at *mike.m.sollosi@uscg.mil;* or Mr. Burt Lahn, NAVSAC meeting coordinator, at telephone 202–372–1526 or email *burt.a.lahn@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix (Pub. L. 92–463).

The NAVSAC is an advisory council authorized by 33 U.S.C. 2073 and chartered under the provisions of the FACA. NAVSAC provides advice and recommendations to the Secretary of Homeland Security, through the Commandant of the U.S. Coast Guard, on matters relating to prevention of maritime collisions, rammings, and groundings; Inland and International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

The meeting will be held at the Renaissance Portsmouth Hotel and Convention Center, 425 Waters Street, Portsmouth, Virginia 23704. *https://maps.google.com/maps?f=q&source=s_q&hl=en&geocode=&q=425+water+st+portsmouth+va&aq=&vps=1&jsv=466g&sll=37.857507,95.625&sspn=36.699081,78.837891&vpsrc=3&t=h&ie=UTF8&ct=clnk&cd=1&spell=1.*

Agenda: The NAVSAC will meet to review, discuss and formulate recommendations on the following topics:

Tuesday, December 3, 2013

(1) Risk assessment updates. At the April 2013 Council meeting the Coast Guard provided an overview of ongoing risk assessments for several U.S. ports/waterways. The Council will receive an updated brief on the status of the risk assessments and the progress made since the April 2013 meeting.

(2) E-Navigation Strategy. The Council will receive an updated brief on activities of the Committee on the Marine Transportation System, and progress made on the development of the National E-Navigation Strategy.

(3) Atlantic Coast Ports Access Route Study (ACPARS).

The Council will receive an update on the ACPARS undertaken to accommodate offshore wind energy development. The update will include a presentation on what activities are currently in progress, and those expected to commence in calendar year 2014.

(4) Navigation Rules Regulatory Project. The Council will receive an update on the Coast Guard's progress toward implementing NAVSAC proposed changes to the Inland Navigation Rules.

(5) Electronic Charts and Publications. The Council will receive an update on recent changes announced by the National Oceanic and Atmospheric Administration, Office of Coast Survey, to the printing and distribution of paper nautical charts and publications.

Following the above presentations, the Council will form working groups to discuss and provide recommendations on the following tasks as appropriate:

(1) NAVSAC Task 12–03—Unmanned vehicles/vessels (UV). The Council was asked to review current UV standards of operation, consider whether the latest generation of these vessels should employ AIS, and propose additional rules/standards of operation for both unmanned underwater vehicles, and unmanned surface vessels. NAVSAC previously discussed this task at both the November 2012 meeting and the April 2013 meeting. At the conclusion of the April 2013 meeting NAVSAC agreed to continue discussions and deliberations at the fall 2013 meeting. The Council will be asked to continue discussions on this task and provide a Resolution that includes recommendations for rules/standards of operation for unmanned surface vessels.

(2) NAVSAC Task 13–02—Discussion of vessel crossing situations outlined in the Inland Navigation Rules, 33 CFR 83.15(b). The Council will be asked to begin discussions and provide recommendations on amending Rule 15(b), including what impacts any proposed amendments may have on vessels crossing situations on the western rivers system.

(3) NAVSAC Task 13–03—Continued use of Dayshapes to indicate status. The Council will be asked to begin discussions and provide recommendations on the continued display of Dayshapes for vessels as required by 33 CFR subpart C of the Inland Navigation Rules.

Public comments or questions will be taken during the meeting after the Council discusses each issue and prior to the Council formulating recommendations on each issue. There will also be a public comment period at the end of the meeting.

Wednesday, December 4, 2013

(1) Working Group Discussions continued from December 3, 2013.

(2) Working Group Reports presented to the Council.

(3) New Business:

a. Summary of NAVSAC Action Items.

b. Schedule Next Meeting Date—Spring 2014.

c. Council discussions and summary of new tasks and pending action items.

A public comment period will be held after the discussion of new tasks. Speakers' comments are limited to 10 minutes each. Public comments or questions may also be taken during the discussion and recommendations, and new business portions of the meeting.

Dated: November 5, 2013.

G.C. Rasicot,

Director, Marine Transportation Systems, U.S. Coast Guard.

[FR Doc. 2013–27014 Filed 11–12–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2013–0004; OMB Number 1014–0004; 134E1700D2 EEEE500000 ET1SF0000.DAQ000]

Information Collection Activities: Oil and Gas Well-Completion Operations; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-Day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart E, *Oil and Gas Well Completion Operations*. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

DATES: You must submit comments by December 13, 2013.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–0004). Please provide a copy of your comments to Bureau of Safety and Environmental Enforcement (BSEE) by any of the means below.

- Electronically: go to *http://www.regulations.gov*. In the Search box, enter BSEE–2013–0004 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nicole.mason@bsee.govmailto:cheryl.blundon@mms.gov,* fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; Attention: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014–0004 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch, (703) 787–1605, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations.

OMB Control Number: 1014–0004.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on OCS resources; and preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR part 250, subpart E, concern oil and gas well-completion operations and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE analyzes and evaluates the information and data collected to ensure that planned well-completion operations will protect personnel and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, BSEE uses the information to ensure (a) compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion operations are conducted on well casings that are structurally competent; and (e) sustained casing pressures are within acceptable limits.

Most responses are mandatory; while others are to obtain or retain benefits. The BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program*.

Frequency: Weekly, monthly, biennially, and vary by section.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators, and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 40,183 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be

usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart E	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours (rounded)
Requests				
502	Request an exception to shutting in producible wells before moving a well-completion rig or related equipment.	5.5	35 exceptions	193
512	Request establishment, amendment, or cancellation of well-completion field rules.	11	28 field rules	308
500–531	General departure and alternative compliance requests not specifically covered elsewhere in Subpart E regulations.	3.5	165 requests	578
Subtotal			228 responses	1,079
Records				
506	Record dates and times of well-completion operations safety meetings.	1	360 completions × 2 meetings = 720.	720
511	Record results weekly of traveling-block safety device in operations log.	1.5	360 completions × 2 recordings = 720.	1,080
514(d)	Request approval from the District Manager to displace kill-weight fluids to an underbalanced state; submit detailed written procedures with your APM.	3.75	106 requests	398
515(e)(2)(ii)	Allow BSEE access to witness testing, inspections, and information verification. Notify District Manager at least 72 hours prior to shearing ram tests.	1.15	21 notifications	24
517(a)	Record all your BOP test pressures	1.25	360 completions × 4 recordings = 1,440.	1,800
517(c), (i)	Record time, date, and results of all pressure tests, crew drills, actuations, and inspections of the BOP in driller's report.	6	360 completions × 4 recordings = 1,440.	8,640
517(d)(8)	Function test ROV interventions on your subsea BOP stack; document all test results; make available to BSEE upon request.	10	17 wells	170
517(d)(8)(ii) & (iii)	Notify District Manager at least 72 hours prior to stump/initial test on seafloor; document all test results and make them available to BSEE upon request.	0.75	17 notifications	13
517(d)(9)	Function test autoshear and deadman on your subsea BOP stack during stump test; document all test results; make available to BSEE upon request.	0.75	17 completions	13
517(e)	Record reason for postponing BOP test in driller's report.	0.75	34 recordings	26
517(g)(l)	Document the procedures used for BOP inspections; record results; maintain records for 2 years; make available to BSEE upon request.	7 days × 12 hrs/day = 84.	99 rigs/once every 3 years = 33 per year.	2,772
517(g)(2)	Request alternative method to inspect a marine riser.	Burden covered under 1014–0022		0
517(h)	Document the procedures used for BOP maintenance; record results; maintain records for 2 years; make available to BSEE upon request.	1.5	99 rigs	149
517(i)(1)–(3)	Record BOP test pressure on pressure charts; onsite rep certify and sign/date reports; document sequential order of BOP/auxiliary testing, pressure, and duration of each test.	3	362 completions × 4 recordings = 1,448.	4,344
Subtotal			6,112 responses	20,149

Citation 30 CFR 250 Subpart E	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours (rounded)
Submittals				
505; 513; 516(a); 526	Submit Forms BSEE–0123, BSEE–0123S, BSEE–0124, and BSEE–0125 and all accompanying information to conduct well-completion operations; request written approval.	Burden included under 1014–0018.		0
515	Submit a description of your BOP and its components; schematic drawings; independent third-party verification and all supporting information (evidence showing appropriate licenses, has expertise/experience necessary to perform required verifications, etc.) with your APM.	17	292 submittals	4,964
517(d)(8), (9)	Submit test procedures with your APM for approval and relevant supporting data.	Burden covered under 1014–0018.		0
518(b)	Submit results of casing pressure testing, calipering, and other evaluations (every 30 days during prolonged operations); notify BSEE if sustained casing pressure is observed on a well.	4.75	25 results	119
526(a); 527	Submit notification of corrective action	2	68 actions	136
526(a); 530(a)	Submit a corrective action plan; notify BSEE after completion of corrected action within 30 days.	14	68 plans	952
526(b); 528	Submit a casing pressure request; any additional information as needed.	9	484 requests	4,356
530(b)	Submit the casing pressure diagnostic test data within 14 days.	2.5	54 submittals	135
Subtotal			991 responses	10,662
Post/Retain				
514(c)	Post the number of stands of drill pipe/collars that may be pulled and equivalent well-control fluid volume.	1.5	741 postings	1,112
517(i)(6)	Retain all records including pressure charts, driller's report, referenced documents pertaining to BOP tests, actuations, and inspections at the facility for duration of the activity.	2.5	362 records	905
517(i)(7)	After completion of well, retain all records for 2 years at location conveniently available to BSEE.	2.75	362 records	996
524	Retain records of casing pressure and diagnostic tests for 2 years or until the well is abandoned.	1.75	3,017 records	5,280
Subtotal			4,482 responses	8,293
Total Hour Burden			11,813 Responses	40,183

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.,)* provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on August 12, 2013, we published a **Federal Register** notice (78 FR 48893) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. Also, 30 CFR 250.199 explains that BSEE will accept comments at any time on the information collection requirements and burdens of our 30 CFR 250 regulations.

We display the OMB control number and provide the address to which they should send comments. We have received one comment in response to these efforts; however, it was not germane to the paperwork burdens of this ICR.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSSE Information Collection Clearance Officer: Cheryl Blundon (703) 787–1607.

Dated: October 24, 2013.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2013–27074 Filed 11–12–13; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2013–0006; OMB Number 1014–0001; 134E1700D2 EEEE500000 ET1SF0000.DAQ000]

Information Collection Activities: Oil and Gas Well-Workover Operations; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-Day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart F, *Oil and Gas Well-Workover Operations.* This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

DATES: You must submit comments by December 13, 2013.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–0001). Please provide a copy of your comments to Bureau of Safety and Environmental Enforcement (BSEE) by any of the means below.

- *Electronically:* go to *http://www.regulations.gov.* In the Search box, enter BSEE–2013–0006 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- *Email: nicole.mason@bsee.govmailto:cheryl.blundon@mms.gov,* fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; Attention: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014–0001 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch, (703) 787–1605, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart F, Oil and Gas Well-Workover Operations.

OMB Control Number: 1014–0001

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR Part 250, Subpart F, Oil and Gas Well-Workover Operations are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information collected to analyze and evaluate planned well-workover operations to ensure that these operations result in personnel safety and protection of the environment. They use this evaluation in making decisions to approve, disapprove, or to require modification to the proposed well-workover operations. Specifically, BSEE uses the information collected to:

- Review log entries of crew meetings to verify that safety procedures have been properly reviewed.
- Review well-workover procedures relating to hydrogen sulfide (H_2S) to ensure the safety of the crew in the event of encountering H_2S.
- Review well-workover diagrams and procedures to ensure the safety of well-workover operations.
- Verify that the crown block safety device is operating and can be expected to function and avoid accidents.
- Verify that the proposed operation of the annular preventer is technically correct and will provide adequate protection for personnel, property, and natural resources.
- Verify the reasons for postponing blowout preventer (BOP) tests, verify the state of readiness of the equipment and ascertain that the equipment meets safety standards and requirements, ensure that BOP tests have been conducted in the manner and frequency to promote personnel safety and protect natural resources. Specific testing

information must be recorded to verify that the proper test procedures were followed.

• Assure that the well-workover operations are conducted on well casing that is structurally competent.

Most responses are mandatory; while others are to obtain or retain benefits. The BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program.*

Frequency: On occasion, weekly, monthly, biennially, and varies by section.

Description of Respondents: Potential respondents comprise Federal OCS oil, gas, and sulphur lessees and/or operators, and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 53,156 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250, Subpart F and NTL	Reporting requirement	Hour burden	Average number of annual reponses	Annual burden hours (rounded)
Requests				
602	Request exceptions prior to moving well-workover equipment.	3.75	30 requests	113
605; 613; 616(a), (f)(4); 617(d).	Request approval to begin subsea well-workover operations; submit Forms BSEE–0124 (include, if required, alternate procedures and equipment; stump test procedures plan) and BSEE–0125; and all supporting documentation.	Burden covered under 1014–0018.		0
612	Request establishment/amendment/cancellation of field well-workover rules.	5	23 requests	115
614(d)	Request approval from the District Manager to displace kill-weight fluids to an underbalanced state; submit detailed written procedures with your APM.	4	51 requests	204
617(a)	Request exception to rated working pressure of the BOP equipment; request exception to annular-type BOP testing.	26	270 requests	7,020
618(a)(2)	Request approval to use alternative method to inspect a marine riser.	Burden covered under 1014–0022.		0
600–620	General departure and alternative compliance requests not specifically covered elsewhere in Subpart F regulations.	34	409 requests	13,906
Subtotal			783 responses	21,358
Posting				
614(b)	Post number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and equivalent well-control fluid volume.	0.75	306 postings	230
Subtotal			306 responses	230
Submittals/Notifications				
602	Notify BSEE of any rig movement within Gulf of Mexico (Form BSEE–0144).	Burden covered under 1014–0018		0
615	Submit a description of your BOP and its components; schematic drawings; independent third party verification and all supporting information (evidence showing appropriate licenses, has expertise/experience necessary to perform required verifications, etc.) with your APM.	22.75	440 submittals	10,010
615(e)(2)(ii)	Allow BSEE access to witness testing, inspections, and information verification. Notify District Manager at least 72 hours prior to shearing ram tests.	0.75	14 notifications	11

Citation 30 CFR 250, Subpart F and NTL	Reporting requirement	Hour burden	Average number of annual reponses	Annual burden hours (rounded)
617(h)(1)(ii)	Notify District Manager at least 72 hours prior to stump/initial test on seafloor.	0.5	51 notifications	26
619; NTL	Notify BSEE if sustained casing pressure is observed on a well.	2	508 notifications	1,016
619(b)	Submit results of pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing (every 30 days during prolonged operations); request written approval.	5	25 reports	125
Subtotal			1,038 responses	11,188
Record/Document				
606	Instruct crew members in safety requirements of operations to be performed; document meetings; make available to BSEE for review.	1.75	612 workovers × 5 meetings = 3,060.	5,355
611	Document results weekly of traveling-block safety device in the operations log.	1.5	351 workovers × 3 results = 1,053.	1,580
617(b)(2)	Record reason for postponing BOP system tests in operations log.	1.25	31 postponed tests	39
617(f); 618(a)(1)	Record test pressures during BOP and coiled tubing tests for well-workovers on a pressure chart or with a digital recorder; certify the information is correct.	2.75	440 workovers × 3 recordings = 1,320.	3,630
617(g); 618(a)(1)	Record time, date, and results of all pressure tests, actuations, inspections, and crew drills of the BOP system components and risers in the operations log during well-workovers; retain records for 2 years; make available to BSEE.	4.75	440 workovers × 3 recordings = 1,320.	6,270
617(h)(l)*	Document all test results of your ROV intervention functions including how you test each ROV function; submit test procedures with your APM for District Manager approval; make available to BSEE upon request.	10	51 workovers	510
617(h)(2)*	Document all autoshear and deadman test results; submit test procedures with your APM for District Manager approval; make available to BSEE upon request.	1	51 workovers	51
618(a)	Document the procedures used for BOP inspections; record results; maintain records for 2 years; make available to BSEE upon request.	7 days × 12 hrs/day = 84.	99 rigs/once every 3 years = 33 per year.	2,772
618(b)	Document the procedures used for BOP maintenance; record results; maintain records for 2 years; make available to BSEE upon request.	1.75	99 rigs	173
Subtotal			7,018 responses	20,380
Total Burden			9,145 Responses	53,156

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.,)* provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on August 12, 2013, we published a **Federal Register** notice (78 FR 48895) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. Also, 30 CFR 250.199 explains that BSEE will accept comments at any time on the information collection requirements and burdens of our 30 CFR 250 regulations. We display the OMB control number and provide the address to which they should send comments. We received one comment in response to the **Federal**

Register notice. The comment was not germane to the paperwork burdens of this information collection.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSSE Information Collection Clearance Officer: Cheryl Blundon (703) 787–1607.

Dated: October 24, 2013.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2013–27073 Filed 11–12–13; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–RF–2013–N254: FXRS12630900000–145–FF09R81000]

Proposed Information Collection; National Wildlife Refuge Special Use Permit Applications and Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on June 30, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by January 13, 2014.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–0102'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, consolidated all refuge units into a single National Wildlife Refuge System (System). It also authorized us to offer visitor and public programs, including those facilitated by commercial visitor and management support services, on lands of the System when we find that the activities are appropriate and compatible with the purpose for which the refuge was established and the System's mission. The Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) allows the use of refuges for public recreation when it is not inconsistent or does not interfere with the primary purpose(s) of the refuge. The Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) (ANILCA) provides specific authorization and guidance for the administration and management of national wildlife refuges within the State of Alaska. Its provisions provide for the issuance of permits under certain circumstances.

We issue special use permits for a specific period as determined by the type and location of the management activity or visitor service provided. These permits authorize activities such as:

- Agricultural activities (haying and grazing, 50 CFR 29.1, 29.2, and 29.3).
- Beneficial management tools that we use to provide the best habitat possible on some refuges (50 CFR 30.11, 31.14, 31.16, and 36.41).
- Special events, group visits and other one-time events (50 CFR 25.41, 26.36, 25.61, and 36.41).
- Recreational visitor service operations (50 CFR 25.41, 25.61, and 36.41).
- Guiding for fishing, hunting, wildlife education, and interpretation (50 CFR 25.41, and 36.41).
- Commercial filming (50 CFR 27.71) and other commercial activities (50 CFR 29.1 and 36.41).
- Building and using cabins to support subsistence or commercial activities (in Alaska) (50 CFR 26.35 and 36.41).
- Research, inventory and monitoring, and other noncommercial activities (50 CFR 26.36 and 36.41).

We use three forms to collect applicant information:

- FWS Form 3–1383–G (General Special Use Application and Permit).
- FWS Form 3–1383–C (Commercial Activities Special Use Application and Permit).
- FWS Form 3–1383–R (Research and Monitoring Special Use Application and Permit).

The forms serve as both the application and permit. You may view the currently approved forms at *http://www.fws.gov/forms/*. The information we collect helps ensure that:

- Applicants are aware of the types of information that may be needed for permit issuance.
- Requested activities are appropriate and compatible with the purpose(s) for which the refuge was established and the System's mission.
- Applicant is eligible or is the most qualified applicant to receive the special use permit.

We may collect the necessary information in a nonform format (through discussions in person or over the phone, over the Internet, by email, or by letter). In some instances, respondents will be able to provide information verbally. Often, a simple email or letter describing the activity will suffice. For activities (e.g., commercial visitor services, research, etc.) that might have a large impact on refuge resources, we may require applicants to provide more detail on operations, techniques, and locations. Because of the span of activities covered by special use permits and the different management needs and resources at each refuge, respondents may not be required to answer all questions. Depending on the requested activity, refuge managers have the discretion to ask for less information than appears on the forms. However, refuge managers cannot ask for more or different information.

We issue permits for a specific period as determined by the type and location of the use or service provided. We use these permits to ensure that the applicant is aware of: (1) The requirements of the permit, and (2) his/her legal rights. Refuge-specific special conditions may be required for the permit. We identify conditions as an addendum to the permit. Most of the special conditions pertain to how a permitted activity may be conducted and do not require the collection of information. However, some special conditions, such as activity reports, before and after site photographs, or data sharing, would qualify as an information collection, and we have

included the associated burden in the table below.

II. Data

OMB Control Number: 1018–0102.

Title: National Wildlife Refuge Special Use Permit Applications and Reports, 50 CFR 25, 26, 27, 29, 30, 31, 32, and 36.

Type of Request: Extension of a previously approved collection.

Service Form Numbers: 3–1383–G, 3–1383–C, and 3–1383–R.

Description of Respondents: Individuals and households; businesses and other for-profit organizations; nonprofit organizations; farms; and State, local, or tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours
Form 3–1383–G	13,500	13,500	1/2 hour	6,750
Form 3–1383–C	1,200	1,200	4 hours	4,800
Form 1383–R	300	300	4 hours	1,200
Activity Reports	600	600	1/2 hour	300
Totals	15,600	15,600		13,050

Estimated Annual Nonhour Burden Cost: $120,000 for fees associated with applications for commercial use activities.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 7, 2013.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2013–27149 Filed 11–12–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–201–N255; FF09M21200–134–FXMB1231099BPP0]

Proposed Information Collection; Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds and Eagles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on February 28, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by January 13, 2014.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–0022'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Our Regional Migratory Bird Permit Offices use information that we collect on permit applications to determine the eligibility of applicants for permits requested in accordance with the criteria in various Federal wildlife conservation laws and international treaties, including:

(1) Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).

(2) Lacey Act (16 U.S.C. 3371 et seq.).

(3) Bald and Golden Eagle Protection Act (16 U.S.C. 668).

Service regulations implementing these statutes and treaties are in chapter I, subchapter B of title 50 of the Code of Federal Regulations (CFR). These regulations stipulate general and specific requirements that, when met, allow us to issue permits to authorize activities that are otherwise prohibited.

All Service permit applications are in the 3–200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits. The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity.

II. Data

OMB Control Number: 1018–0022.

Title: Federal Fish and Wildlife License/Permit Applications and Reports, Migratory Birds and Eagles, 50 CFR 10, 13, 21, and 22.

Service Form Numbers: 3–200–6 through 3–200–9, 3–200–10a through 3–200–10f, 3–200–12 through 3–200–16, 3–200–18, 3–200–67, 3–200–68, 3–200–71, 3–200–72, 3–200–77, 3–200–78, 3–

200–79, 3–200–81, 3–200–82, 3–202–1 through 3–202–17, 3–186, and 3–186A.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Individuals; zoological parks; museums; universities; scientists; taxidermists; businesses; utilities, and Federal, State, tribal, and local governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Form/activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours [1]
Applications				
3–200–6—Import/Export	76	76	1	76
3–200–7—Scientific Collecting	210	210	5	1,050
3–200–8—Taxidermy	690	690	2	1,380
3–200–9—Waterfowl Sale and Disposal	370	370	1.5	555
3–200–10a—Special Purpose Salvage	300	300	1.5	450
3–200–10b—Rehabilitation	175	175	12	2,100
3–200–10c—Education—Live	250	250	4.5	1,126
3–200–10d—Education—Dead	65	65	2.5	163
3–200–10e—Game Bird Propagation	15	15	1.5	23
3–200–10f—Miscellaneous	50	50	2.5	126
3–200–12—Raptor Propagation	55	55	4	220
3–200–13—Depredation	2,700	2,700	[2] 3.5	7,963
3–200–14—Eagle Exhibition	120	120	5.5	660
3–200–15a—Eagle Indian Religious and First Order	2,800	2,800	1	2,800
3–200–15b—Eagle Indian Religious Reorder	2,700	2,700	.5	1,350
3–200–16—Take of Depredating Eagles	30	30	3.5	105
3–200–18—Take of Golden Eagle Nests	4	4	6.5	26
3–200–67—Special State Canada Goose	1	1	7	7
3–200–68—Renewal of Permit	5,050	5,050	1.5	7,575
3–200–71—Eagle Take (Disturb)	150	150	16	2,400
3–200–72—Eagle Nest Take	50	50	16	800
3–200–71 and 3–200–72—Eagle/Nest Take Amendment	40	40	6	240
3–200–71 and 3–200–72—Eagle Take Programmatic	26	26	40	1,040
3–200–71 and 3–200–72—Eagle Take Programmatic amendment	10	10	20	200
3–200–77—Native American Eagle Take	10	10	2.25	22
3–200–78—Native American Eagle Aviary	5	5	5	25
3–200–79—Special Purpose Abatement	25	25	2.5	63
3–200–81—Special Purpose Utility	50	50	8	400
3–200–82—Eagle Transport	10	10	1	10
Reports				
3–202–1—Scientific Collecting	580	580	1	580
3–202–2—Waterfowl Sale and Disposal	1,000	1,000	.5	500
3–202–3—Special Purpose Salvage	1,850	1,850	1	1,850
3–202–4—Rehabilitation	1,650	1,650	3	4,950
3–202–5—Possession for Education	1,600	1,600	1.5	2,400
3–202–6—Special Purpose Game Bird	95	95	.5	48
3–202–7—Special Purpose Miscellaneous	125	125	.5	63
3–202–8—Raptor Propagation	425	425	1	425
3–202–9—Depredation	3,000	3,000	1	3,000
3–202–10—Special State Canada Goose	18	18	1	18
3–202–11—Eagle Depredation	125	125	1	125
3–202–12—Acquisition and Transfer Request	2,600	2,600	1.5	3,900
3–202–13—Eagle Exhibition	1,300	1,300	1	1,300
3–202–14—Native American Eagle Aviary	10	10	.5	5
3–202–15—Eagle Take Monitoring & Reporting	1,120	1,120	30	33,600
3–202–16—Eagle Nest Take & Monitoring	40	40	16	640
3–202–17—Special Purpose Utility	200	500	1	500
3–186—Notice of Transfer & Sale of Migratory Waterfowl	12,900	12,900	.25	3,225
3–186a—Migratory Bird Acquisition & Disposition	18,640	18,640	.25	4,660
Totals	63,315	63,615	.....	94,744

[1] Completion time varies from 1.75 hours for individuals to 3.5 hours for businesses and governments.
[2] Rounded.

Estimated Annual Nonhour Burden Cost: $842,225 for permit application fees.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;

• Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 7, 2013.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2013–27148 Filed 11–12–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2013–N096; 12560–0000–10137 S3]

Dungeness National Wildlife Refuge, Clallam County, WA; Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for the Dungeness National Wildlife Refuge (Refuge). In this CCP, we describe how we will manage the Refuge for the next 15 years.

ADDRESSES: You may view or obtain copies of the CCP and FONSI by any of the following methods. You may request a hard copy or a CD–ROM of the document.

Agency Web site: Download the CCP and FONSI at *http://www.fws.gov/pacific/planning/main/docs/wa/docsdungeness.htm.*

Email: FW1PlanningComments@fws.gov. Include ''Dungeness NWR CCP'' in the subject line of the message.

Fax: Attn: Deputy Project Leader, (360) 457–9778.

Mail: Washington Maritime National Wildlife Refuge Complex, 715 Holgerson Rd., Sequim, WA 98382.

In-Person Viewing or Pickup: Call (360) 457–8451 to make an appointment during regular business hours at the above address.

For more information on locations for viewing or obtaining documents, see ''Public Availability of Documents'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Lorenz Sollmann, Deputy Project Leader, phone (360) 457–8451.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for the Refuge. We started this process through a notice in the **Federal Register** (76 FR 61378; October 4, 2011). We released the draft CCP/EA to the public, announcing it and requesting comments in a notice of availability in the **Federal Register** (77 FR 71011; November 28, 2012).

We announce the availability of the FONSI for the CCP/EA in accordance with National Environmental Policy Act (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment in the draft CCP/EA.

The CCP will guide us in managing and administering the Refuge for the next 15 years. Alternative B in the draft CCP/EA was selected for implementation. To address public comments received on the draft CCP/EA, changes and clarifications were made to the final CCP where appropriate. A summary of the public comments we received is included in the final CCP with our responses.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify compatible wildlife-dependent recreational opportunities available to the public, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update each CCP at least every 15 years in accordance with the Refuge Administration Act.

Selected Alternative

Under the selected alternative, our emphasis on protecting and maintaining forested, near shore, freshwater wetland, and stream-riparian habitats will continue, with an increased level of active habitat management, monitoring, and enhancement.

The Refuge's public use activities will include: Saltwater fishing, shell-fishing (clams and crabs), wildlife observation and photography, hiking, no-wake boating, jogging, horseback riding (with stipulations), beach use, and environmental education and interpretation. The areas and timing of public access will remain the same with some exceptions, including new boat-landing hours and jogging stipulations. Jogging will be allowed on the trail adjacent to the Refuge's parking lots and along the west beach from the end of the upland forested trail to the Refuge's western boundary. Horseback riding would be allowed with stipulations, on the beach west of where the main trail meets Dungeness Spit, if a safe and legal alternate access route can be obtained. If an alternate access route is obtained from the east, horseback riding on a Refuge-owned road to the beach would be allowed. Staff and volunteer time devoted to visitors and community outreach will increase. New orientation materials, regulatory signage, and volunteer opportunities will be developed.

The effects of climate change on Refuge resources will be considered during management activities, and we will reduce the Refuge's carbon footprint. Invasive species will be monitored and controlled. Other management activities include fire management, maintenance of existing structures, coordination with State, Tribal, and other partners; cultural resources protection, and land protection within the approved Refuge boundary. All actions are subject to funding availability.

Public Availability of Documents

Printed copies will be available at the Refuge and at the following libraries.

▪ North Olympic Public Library Sequim Branch, 630 N. Sequim Ave., Sequim, WA 98382.

▪ North Olympic Public Library Port Angeles Branch, 2210 South Peabody St., Port Angeles, WA 98362.

- Port Townsend Public Library, 1220 Lawrence St., Port Townsend, WA 98368.
- Jefferson County Central Library, 620 Cedar Ave., Port Hadlock, WA 98339.

Dated: May 10, 2013.

Hugh Morrison,

Acting Regional Director, Pacific Region, Portland, Oregon.

Editorial Note: This document was received in the Office of the Federal Register on November 5, 2013.

[FR Doc. 2013–26798 Filed 11–7–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2013–N237; 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 applications to conduct certain activities with endangered or threatened species. With some exceptions, 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 requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by December 13, 2013.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–XXXXXX).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (e.g., Permit No. TE–XXXXXX) in the subject line of the message.
- *U.S. Mail:* 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) 236–4212 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Permit Coordinator, Ecological Services, (303) 236–4212 (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 the permittees 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. Documents and other information the applicants have submitted with their 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 TE080647

Applicant: Wildlife Specialties, LLC, P.O. Box 1231, Lyons, CO.

The applicant requests a permit to conduct presence/absence surveys in Colorado, Arizona, and New Mexico for Southwestern willow flycatcher (*Empidonax traillii extimus)* for the purpose of enhancing the species' survival.

Permit Application Number TE96435A

Applicant: Laura Steger, 2169 East Francisco Blvd., Suite G, San Rafael, CA.

The applicant requests a permit to conduct presence/absence surveys in Colorado for Southwestern willow flycatcher (*Empidonax traillii extimus)* for the purpose of enhancing the species' survival.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (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 these requests 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 6, 2013.

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2013–27090 Filed 11–12–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

National Park Service

[NPS–WASO–NRSS–SSD–14447; PPWONRADA0, PPMRSNR1Y.NA0000]

Proposed Information Collection; Visibility Valuation Survey

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a currently valid OMB control number.

DATES: To ensure that your comments on this IC are considered, we must receive them on or before January 13, 2014.

ADDRESSES: Direct all written comments on this IC to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *pponds@nps.gov* (email). Please reference Information Collection 1024–COLORIV in the subject line or Bret Meldrum, Chief, Social Science Program, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525–5596 (mail); *Bret_Meldrum@nps.gov* (email); or 970–267–7295 (phone).

FOR FURTHER INFORMATION CONTACT: Susan Johnson, National Park Service Air Resources Division, U.S. National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225 (mail); *Susan_Johnson@nps.gov* (email); or (303) 987–6694 (phone).

I. Abstract

The Clean Air Act (Sections 169A, 169B, and 110(a)(2)(j) charges the NPS with an ''affirmative responsibility to protect air quality related values (including visibility).'' The NPS believes that the value of visibility changes should be represented in cost-benefit analyses performed regarding state and federal efforts that may affect visibility (including the Regional Haze Rule, 40 CFR Part 51). Updated estimates of visibility benefits are required because the studies conducted in the 1970s and 1980s do not reflect current baseline visibility conditions in national parks and wilderness areas.

The NPS plans to conduct a nationwide stated preference survey to estimate the value of visibility changes in national parks and wilderness areas. Survey development and pre-testing have already been conducted under a previous IC (OMB Control Number 1024–0255). The purpose of this IC is to conduct the full, national survey.

II. Data

OMB Number: 1024–0255.

Title: Visibility Valuation Survey.

Type of Request: Reinstatement of OMB Control Number 1024–0225 for which the pilot study has been completed.

Affected Public: Individuals or households.

Respondent Obligation: Voluntary.

Estimated Number of Respondents: 6,400 respondents.

Estimated Time and frequency of Response: This is a one-time survey estimated to take 25 minutes per respondent to complete.

Estimated Total Annual Burden Hours: 2,667 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 6, 2013.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2013–27092 Filed 11–12–13; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–502 and 731–TA–1227–1228 (Preliminary)]

Steel Concrete Reinforcing Bar from Mexico and Turkey

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Mexico and Turkey of steel concrete reinforcing bar, provided for in subheadings 7213.10, 7214.20, and 7228.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV), and by imports of steel concrete reinforcing bar that are allegedly subsidized by the government of Turkey.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 4, 2013, a petition was filed with the Commission and Commerce by the Rebar Trade Action Coalition and its individual members: Nucor Corporation, Charlotte, NC; Gerdau Ameristeel U.S. Inc., Tampa, FL; Commercial Metals Company, Irving, TX; Cascade Steel Rolling Mills, Inc., McMinnville, OR; and Byer Steel Corporation, Cincinnati, OH, alleging that an industry in the United States is materially injured or threatened with

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Shara L. Aranoff dissenting with regard to subject imports from Mexico.

material injury by reason of subsidized imports of steel concrete reinforcing bar from Turkey and LTFV imports of steel concrete reinforcing bar from Mexico and Turkey. Accordingly, effective September 4, 2013, the Commission instituted countervailing duty investigation No. 701–TA–502 and antidumping duty investigation Nos. 731–TA–1227–1228 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 11, 2013 (78 FR 55755). The conference was held in Washington, DC, on September 25, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 6, 2013.[3] The views of the Commission are contained in USITC Publication 4432 (November 2013), entitled *Steel Concrete Reinforcing Bar from Mexico and Turkey: Investigation Nos. 701–TA–502 and 731–TA–1227–1228.*

Issued: November 6, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–27069 Filed 11–12–13; 8:45 am]

BILLING CODE 7020–02–P

[3] Due to the lapse in appropriations and ensuing cessation of Commission operations, all import injury investigations conducted under authority of Title VII of the Tariff Act of 1930 have been tolled by 16 days. 78 FR 64011, October 25, 2013.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–898]

Certain Marine Sonar Imaging Devices, Products Containing the Same, and Components Thereof; Institution of Investigation Pursuant to United States Code

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 20, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Navico, Inc. of Tulsa, Oklahoma and Navico Holding AS of Norway. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain marine sonar imaging devices, products containing the same, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,305,840 (''the '840 patent'') and U.S. Patent No. 8,300,499 (''the '499 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 6, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain marine sonar imaging devices, products containing the same, and components thereof by reason of infringement of one or more of claims 1, 4, 6–20, 22, 23, 25–27, 29, 32–59, 61, 62, 66, and 68–73 of the '840 patent and claims 1, 2, 17, 19–21, 23–25, 40, 42–44, 59, 62–66, and 69–81 of the '499 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Navico, Inc., 4500 South 129th East Avenue, Suite 200, Tulsa, OK 74134

Navico Holding AS, Nyaskaiveien 2, 4370 Egersund, Norway

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Raymarine, Inc., 9 Townsend West, Nashua, NH 03063

Raymarine UK Ltd., Marine House,Cartwright Drive, Fareham PO15 5RJ, United Kingdom

In-Tech Electronics Ltd., Unit A, 13/F, Wing Tai Centre, 12 Hing Yip St., Kwun Tong, Kowloon, Hong Kong

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination

and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: November 6, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–27070 Filed 11–12–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0016]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Certification of Identity

ACTION: 60-Day notice.

The Department of Justice (DOJ), Justice Management Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 13, 2014. 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 Evie Sassok, 145 N 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:

—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:* Certification of Identity

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form DOJ–361. Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: American Citizens. Other: Federal Government. The information collection will be used by the Department to identify individuals requesting certain records under the Privacy Act. Without this form an individual cannot obtain the information requested.

(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 69,000 respondents will complete each form within approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated total of 34,500 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., 3W–1407B, Washington, DC 20530.

Dated: November 7, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–27118 Filed 11–12–13; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Amendment Under the Comprehensive Environmental Response, Compensation, and Liability Act

On November 5, 2013, the Department of Justice lodged a proposed consent decree amendment with the United States District Court for the District of South Carolina in the lawsuit entitled *United States of America* v. *AILS, LLC, as successor-in-interest to ABCO Industries, Ltd., et al.,* Civil Action No. 6:92–cv–0153–20, regarding the remedial action at the Medley Farm Superfund Site located in Gaffney, Cherokee County, South Carolina (''Site'').

In 1992, the Court entered a consent decree in the matter of *United States* v. *ABCO Industries, Ltd., et al.,* (''1992 Consent Decree'') under which defendants agreed to perform the remedial action at the Site consistent with the Environmental Protection Agency's (''EPA's'') 1991 Record of Decision. The 1992 Consent Decree required defendants to, among other things, utilize a groundwater pump-and-treat system to address contaminated groundwater. The effectiveness of this system declined through time. In 2012, EPA issued an Amended Record of Decision, amending the groundwater component of the remedy to employ enhanced reductive dechlorination as an active treatment process to address groundwater contamination, and selecting monitored natural attenuation as the contingency remedy. The proposed consent decree amendment includes the revised groundwater cleanup remedy and contingency remedy of the 2012 Amended Record of Decision and addresses other changes such as to the names of defendants. The consent decree amendment was signed by the following defendants: AILS, LLC, as successor-in-interest to ABCO Industries, Ltd.; BASF Corporation; Colonial Heights Packaging Inc.; Ethox Chemicals, LLC; Expert Management Inc. on behalf of National Starch and Chemical Company; Henkel Corporation, as successor-in-interest to Tanner Chemicals, Inc., f/k/a/Evode-Tanner; and Milliken & Company.

The publication of this notice opens a period for public comment on the consent decree amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *AILS, LLC as successor-in-interest to ABCO Industries, Ltd., et al.,* D.J. Ref. No. 90–11–3–104A. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*

To submit comments:	Send them to:
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree amendment may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. We will provide a paper copy of the consent decree amendment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $75.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the appendices, the cost is $8.75.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–27050 Filed 11–12–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On November 6, 2013, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Rhode Island in the lawsuit entitled *United States* v. *Estate of Amilio L. Zompa, et al.,* Civil Action No. 3:12–cv–00812–ML–PAS.

The United States filed this lawsuit under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''). The United States' complaint seeks recovery of costs incurred in connection with the Environmental Protection Agency's cleanup of hazardous substances at the Birch Swamp Road Superfund Site in Warren, Rhode Island. The Consent Decree requires the defendants to pay a total of $92,000 plus interest, and 82% of the net proceeds from the sale of two properties. The Decree also requires the United States on behalf of the Defense Logistics Agency to pay $475,000 to resolve a potential counterclaim for contribution under Section 113(f) of CERCLA.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Estate of Amilio L. Zompa, et al.,* D.J. Ref. No. 90–11–3–090979/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $12.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–27158 Filed 11–12–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Pursuant to the Resource Conservation and Recovery Act and the Clean Water Act

On October 28, 2013, the Department of Justice lodged a proposed Consent Decree (''Decree'') in the United States District Court for the Eastern District of Kentucky in the lawsuit entitled *United States of America* v. *Calgon Carbon Corporation,* Civil Action No. 0:13–cv–00158.

This Decree represents a settlement of claims against the Defendant Calgon Carbon Corporation (''Defendant'' or ''Calgon'') for violations of Kentucky Revised Statutes (KRS) Title XVIII Chapter 224, Subchapter 46-Hazardous Waste et seq. (Section 3005 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 9625), and the Kentucky Hazardous Waste Management Regulations, as authorized, at Title 401 of Kentucky Administrative Regulations (KAR) Chapters 31 through 38 (40 CFR parts 260 through 270), which account for numerous RCRA hazardous waste permit conditions, RCRA interim status conditions, and other RCRA hazardous waste management requirements at Calgon's Big Sandy facility located near Catlettsburg, Kentucky, and at Calgon's Solid Waste Landfill. In addition, the Complaint contains allegations of violations by Calgon of the Clean Water Act (CWA), Sections 301 and 402 of the CWA, 42 U.S.C. SS 1341 and 1311, by not complying with its National Pollutant Discharge Elimination System (NPDES) permit.

Under the proposed Consent Decree, the Defendant will pay a penalty of $1.6 million, to be allocated as $1,374,000 as civil penalty for RCRA violations, and $226,000 for the CWA violations. The Decree provides for stipulated penalties in the event the Defendant fails to comply with the Decree's requirements.

The proposed Consent Decree provides for injunctive relief sought by the United States that EPA believes is necessary to address Calgon's violations and bring the facility into compliance with the law. The injunctive relief that Calgon must perform is set forth in Section V. (Compliance Requirements) of the Consent Decree. Calgon has already submitted a Lagoon Solids Stockpile Sampling Quality Assurance Project Plan (QAPP) and Lagoon Solids Stockpile Sampling Work Plan to address sampling and testing of the Phase II Lagoon Solids Stockpile. EPA has already approved this Work Plan and QAPP, which are attached as an appendix to the Consent Decree. Calgon is required to begin to implement its Work Plan within thirty days of the Effective Date of the Consent Decree, which is the date the Decree is entered by the Court.

Within ninety days from the Effective Date of the Decree, Calgon is required to submit a site specific QAPP and Work Plan to address the sampling and testing of groundwater at Calgon's Residual Solid Waste Landfill. Upon acceptance of the Plan by the Environmental Protection Agency (EPA), Calgon is required to begin to implement the Work within fifteen days.

Calgon must further conduct Corrective Action in accordance with its State-issued RCRA permit and any other applicable Commonwealth rules and regulations for solid waste management

units (SWMUs) and areas of contamination (AOCs). The specific Corrective Action conditions are delegated to the Commonwealth, and will be determined after the assessment work is done pursuant to the Consent Decree.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Calgon Carbon Corporation,* Civil Action No. 0:13–cv–00158, D. J. Ref. No. 90–7–1–09536. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.00 (25 cents per page reproduction cost) payable to the United States Treasury for the Consent Decree and Exhibits thereto.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–27035 Filed 11–12–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; American Time Use Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, ''American Time Use Survey,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

DATES: Submit comments on or before December 13, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201307-1220-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor, OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority to conduct the American Time Use Survey (ATUS), the first Federally administered continuous national survey on time use in the U.S. The ATUS measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the U.S., several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities. While there are no proposed material changes to the ATUS, this ICR is considered to be a revision because of how an agency must account for burden changes under the PRA. Specifically, this ICR includes discretionary burden decreases to offset corresponding discretionary burden increases that will be reflected under other Control Numbers. More specifically, the DOL will now seek OMB approval to conduct 5-minute ATUS modules separately from the full ATUS ICR.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0175. The current approval for this collection is scheduled to expire on December 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 19, 2013 (78 FR 43227).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0175. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL—BLS.

Title of Collection: American Time Use Survey.

OMB Control Number: 1220–0175.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 13,200.

Total Estimated Number of Responses: 13,200.

Total Estimated Annual Burden Hours: 3,520.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 5, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–27060 Filed 11–12–13; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; American Recovery and Reinvestment Act High Growth and Emerging Industries and Other Grants, Performance Data

AGENCY: Office of the Secretary, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''American Recovery and Reinvestment Act High Growth and Emerging Industries and other Grants, Performance Data,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

DATES: Submit comments on or before December 13, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201306–1205-09* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The ICR seeks continued PRA authorization for the ETA to conduct the American Recovery and Reinvestment Act (ARRA) High Growth and Emerging Industries (HGEI) and other Grants, Performance Data information collection. This information collection consists of recordkeeping and reporting by ARRA HGEI grantees funded by six grant programs. Reporting requirements include standardized data collection on program participants and quarterly performance reporting (Form ETA–9153) and narrative progress report submissions.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0478.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on November 30, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL also notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 8, 2013, (78 FR 48462).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0478. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: American Recovery and Reinvestment Act High Growth and Emerging Industries and other Grants, Performance Data.

OMB Control Number: 1205–0478.

Affected Public: Individuals or Households and Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 6,446.

Total Estimated Number of Responses: 6,688.

Total Estimated Annual Burden Hours: 12,720.

Total Estimated Annual Other Costs Burden: 0.

Dated: November 4, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–27138 Filed 11–12–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; American Time Use Survey—Eating and Health Supplement

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) proposal titled, ''American Time Use Survey—Eating and Health Supplement,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 et seq.

DATES: Submit comments on or before December 13, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201307-1220-005,* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority to separate the American Time Use Survey (ATUS) Eating and Health Supplement, which was previously collected as part of the master ATUS information collection approved under Control Number 1220–0175, into a new Control Number. The separation will provide greater flexibility in managing this episodic information collection without needing to revisit more permanent aspects of the ATUS. The Eating and Health Supplement module includes questions about peoples' eating and drinking behaviors, food assistance participation, grocery and meal shopping, food preparation, and food sufficiency. The Supplement also includes questions on general health and physical exercise. Information collected in the Supplement will be published as a public use data set to facilitate research on numerous topics, such as the association between eating patterns, physical activity, and Body Mass Index; time-use patterns of food assistance program participants and low-income nonparticipants; and how time-use varies by health status. The Supplement surveys individuals aged 15 and up from a nationally representative sample.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on July 29, 2013 (78 FR 45567).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Reference Number 201307–1220–005. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: American Time Use Survey—Eating and Health Supplement.

OMB Reference Number: 201307–1220–005.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 12,600.

Total Estimated Number of Responses: 12,600.

Total Estimated Annual Burden Hours: 1,050.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 5, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–27059 Filed 11–12–13; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quick Turnaround Surveys on Workforce Investment Act Implementation

AGENCY: Office of the Secretary, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Quick Turnaround Surveys on Workforce Investment Act Implementation,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

DATES: Submit comments on or before December 13, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation;

including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201308-1205-009* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the ETA to conduct quick turnaround surveys on Workforce Investment Act (WIA) related issues. Specifically, this ICR is to clear a generic framework to obtain expedited OMB approval for each ad hoc WIA quick turnaround survey that will focus on an emerging topic of pressing policy interest. Much of the information available to the ETA on key operational issues is impressionistic or anecdotal in nature, based on hearsay or unsystematic observations, and not sufficiently accurate as to national incidence or scope. Obtaining accurate nationwide information through long-term and in-depth evaluation studies often will not provide timely results. The ETA, thus, has an ongoing need for accurate and timely information that can be found only with systematic quick turnaround studies. Depending on the nature of the questions, the ETA would administer surveys at either the state or local workforce area level or some combination of both together. This ICR might entail surveys of State Workforce Agencies, local Workforce Boards, American Job Centers, Employment Service offices, and offices of other local-area partners.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0436.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on November 30, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL also notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 8, 2013, (78 FR 48464).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0436. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Quick Turnaround Surveys on Workforce Investment Act Implementation.

OMB Control Number: 1205–0436.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Responses: 5,000.

Total Estimated Annual Burden Hours: 7,500.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 7, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–27139 Filed 11–12–13; 8:45 am]

BILLING CODE 4510–FN–P

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION

Meeting of the Military Compensation and Retirement Modernization Commission

AGENCY: Military Compensation and Retirement Modernization Commission.

ACTION: Notice of public meeting.

SUMMARY: The Military Compensation and Retirement Modernization Commission (MCRMC) was established by the National Defense Authorization Act FY 2013. Pursuant to the Act, the Commission is holding public hearings on the mission of the agency.

DATES: The hearing will be held Wednesday November 13, 2013 from 9:00 a.m. to 5 p.m.

ADDRESSES: Hyatt, 1325 Wilson Boulevard, Arlington, Virginia 22209. The hotel is handicap accessible and near the Rosslyn METRO stop.

FOR FURTHER INFORMATION CONTACT: Christopher Nuneviller, Associate Director, Military Compensation and Retirement Modernization Commission, P.O. Box 13170, Arlington, VA 22209, telephone 703–692–2080, fax 703–697–8330, email *christopher.nuneviller@mcrmc.gov.*

SUPPLEMENTARY INFORMATION: The Military Compensation and Retirement Modernization Commission (MCRMC) was established by the National Defense Authorization Act FY 2013, Pub. L. No. 112–239, 126 Stat. 1787 (2013). The Commission will conduct public hearings across the United States and on select military installations internationally in order to solicit comments on the modernization of the

military compensation and retirement systems.

Agenda

Time	Panel
9:00 a.m.	*Service Relief Organizations:* Navy and Marine Corps Relief Society. (others to be announced on *www.mcrmc.gov*).
12:30 p.m.	*Enlisted Associations:* Enlisted Association of the National Guard of the U.S. The Retired Enlisted Association (TREA). Non Commissioned Officers Association (NCOA).
3:00 p.m.	*Guard and Reserve Associations:* Commissioned Officers Association of the U.S. Public Health Service. National Guard Association of the U.S. Reserve Officers Association.

Each public hearing will be transcribed and placed on the Commission's Web site.

Written Comments: In addition to public hearings, and due to the essential need for input from the beneficiaries, the Commission is accepting and strongly encourages comments and other submissions on its Web site (*www.mcrmc.gov*).

Christopher Nuneviller,

Associate Director, Administration and Operations.

[FR Doc. 2013–27137 Filed 11–12–13; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–003]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 13, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepares appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously-approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the government and of private persons directly affected by the government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Health and Human Services, Office of the Secretary (DAA–0468–2012–0009, 19 items, 18 temporary items). Records of the Office of General Counsel, including litigation case files, claims files, injunction files, background materials, and working papers. Proposed for permanent retention are significant legal advice and opinions.

2. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2013–0007, 4 items, 1 temporary item).

Administrative records related to state-run pre-existing condition insurance plans. Proposed for permanent retention are technical guidelines, formal agreements, and statistical reports.

3. Department of Health and Human Services, Indian Health Service (DAA–0513–2013–0001, 3 items, 3 temporary items). Records include drafts, comments, background materials, and logs related to agency rulemaking.

4. Department of Health and Human Services, National Institutes of Health (DAA–0443–2012–0007, 12 items, 11 temporary items). Records of the intramural research program, including intellectual property records, project files, regulated research records, Institutional Review Board records, clinical care case files, radiology and imaging records, patient medical records, and medical staff credentialing records. Proposed for permanent retention are final plans, protocols, and final reports of historically significant intramural research.

5. Department of Homeland Security, Transportation Security Administration (N1–560–12–4, 2 items, 2 temporary items). Master files of an electronic information system used to track internal employee training.

6. Department of Homeland Security, Transportation Security Administration (N1–560–12–7, 2 items, 2 temporary items). Correspondence management records.

7. Department of Homeland Security, Transportation Security Administration (N1–560–12–9, 1 item, 1 temporary item). Master files of an electronic information system containing security incident information.

8. Department of Homeland Security, Transportation Security Administration (N1–560–12–11, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to track personal property.

9. Department of Justice, Agency-wide (DAA–0060–2013–0008, 3 items, 3 temporary items). Records measuring the quality and integrity of government information disseminated to the public.

10. Department of Justice, United States Marshals Service (DAA–0527–2013–0003, 1 item, 1 temporary item). Records of authorizations for individual law enforcement officers to enforce Federal laws outside their normal authority.

11. Department of Labor, Employment and Training Administration (N1–369–09–1, 16 items, 9 temporary items). Field memorandums, handbooks, notices, letters, and working files. Proposed for permanent retention are procedure manuals, policy and guidance issuances, program notices, and related correspondence.

12. Department of the Navy, U.S. Marine Corps (DAA–0127–2013–0002, 1 item, 1 temporary item). Master files of an electronic information system used to track and control purchase requests.

13. Department of the Navy, U.S. Marine Corps (DAA–0127–2013–0016, 1 item, 1 temporary item). Master files of an electronic information system used to manage and schedule the retail workforce in Marine Corps facilities.

14. Department of Transportation, Federal Transit Administration (DAA–0408–2013–0008, 10 items, 10 temporary items). Records of web application systems used to display, track, and collect information on the agency's Web site.

15. Department of the Treasury, Departmental Offices (N1–56–11–03, 6 items, 6 temporary items). Records relating to the creation, maintenance, and content of the agency Web site.

16. Administrative Office of the United States Courts, District Courts of the United States (DAA–0021–2013–0008, 1 item, 1 temporary item). Records relating to non-trial civil case files heard in territorial district courts.

17. Government Printing Office, Agency-wide (DAA–0149–2013–0001, 244 items, 230 temporary items). Records relating to the 15 business functions of the agency, including records pertaining to administrative matters, budget, business operations, congressional operations, finance and billing, human resources, information technology operation, informational services, Inspector General, legal matters, management, plant operations, safety and risk management, secure document operations, and security. Proposed for permanent retention are official budget submissions, program and mission publications, photographs, posters, graphic arts, audiovisual records, historic apprentice yearbooks, Superintendent of Documents subject files, legislative project records, reports to Congress, General Counsel opinions, Public Printer's files, Deputy Public Printer's files, directives, and building and equipment plans.

18. National Archives and Records Administration, Government-wide (DAA–GRS–2013–0001, 7 items, 7 temporary items). A revised General Records Schedule to cover input and output records for electronic information systems and non-recordkeeping copies of electronic records.

Dated: November 5, 2013.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2013–27075 Filed 11–12–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that twenty-one meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 as follows (all meetings are Eastern time and ending times are approximate):

Visual Arts (application review): This meeting will be closed.

Dates: December 3, 2013. 9:00 a.m. to 4:45 p.m. in room 730.

Arts Education (application review): This meeting will be virtual and will be closed.

Dates: December 4, 2013. 12:15 p.m. to 2:30 p.m.

Literature (application review): This meeting will be virtual and will be closed.

Dates: December 4, 2013. 3:00 p.m. to 5:00 p.m.

Visual Arts (application review): This meeting will closed.

Dates: December 4. 9:00 a.m. to 4:45 p.m. in room 730.

Arts Education (application review): This meeting will be virtual and will be closed.

Dates: December 5, 2013. 12:15 p.m. to 2:30 p.m.

Design (application review): This meeting will be virtual and will be closed.

Dates: December 5, 2013. 2:00 p.m. to 4:00 p.m.

Folk and Traditional Arts (application review): This meeting will be closed.

Dates: December 5, 2013. 9:00 a.m. to 5:30 p.m. in room 714.

Literature (application review): This meeting will be virtual and will be closed.

Dates: December 5, 2013. 3:00 p.m. to 5:00 p.m.

Folk and Traditional Arts (application review): This meeting will be virtual and will be closed.

Dates: December 9, 2013. 2:00 p.m. to 4:00 p.m.

Media Arts (application review): This meeting will be closed.

Dates: December 9, 2013. 9:00 a.m. to 6:00 p.m. in Room 730.

Media Arts (application review): This meeting will be closed.

Dates: December 10, 2013. 9:00 a.m. to 6:00 p.m. in Room 730.

Arts Education (application review): This meeting will be virtual and will be closed.

Dates: December 11, 2013. 12:45 p.m. to 3:00 p.m.

Presenting and Multidisciplinary Works (application review): This meeting will be closed.

Dates: December 11, 2013. 9:00 a.m. to 5:00 p.m. in Room 716.

Arts Education (application review): This meeting will be virtual and will be closed.

Dates: December 12, 2013. 12:45 p.m. to 3:00 p.m.

Media Arts (application review): This meeting will be closed.

Dates: December 12, 2013. 9:00 a.m. to 6:00 p.m. in Room 730.

Presenting and Multidisciplinary Works (application review): This meeting will be closed.

Dates: December 12, 2013. 9:00 a.m. to 5:00 p.m. in Room 716.

Media Arts (application review): This meeting will be closed.

Dates: December 13, 2013. 9:00 a.m. to 6:00 p.m. in Room 730.

Museums (application review): This meeting will be virtual and will be closed.

Dates: December 16, 2013. 2:30 p.m. to 4:00 p.m.

Arts Education (application review): This meeting will be virtual and will be closed.

Dates: December 17, 2013. 12:45 p.m. to 3:00 p.m.

Museums (application review): This meeting will be virtual and will be closed.

Dates: December 17, 2013. 2:30 p.m. to 4:00 p.m.

Design (application review): This meeting will be virtual and will be closed.

Dates: December 18, 2013. 2:00 p.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: November 7, 2013.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2013–27085 Filed 11–12–13; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Sunshine Act Meeting of the National Museums and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of Meeting.

SUMMARY: The National Museum and Library Services Board, which advises the Director of the Institute of Museum and Library Services on general policies with respect to the duties, powers, and authority of the Institute relating to museum, library and information services, will meet on November 15, 2013.

DATE AND TIME: Friday, November 15, 2013 from 9:00 a.m. to 2:30 p.m.

PLACE: The meeting will be held at the Birmingham Public Library: Richard Arrington Auditorium, in the Linn Henley Research Library, 2100 Park Place, Birmingham, AL 35203.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed pursuant to subsections (c)(4) and (c)(9) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.

AGENDA: Twenty-Eight Meeting of the National Museum and Library Service Board Meeting

Morning Session—9:00 a.m. to 12:00 p.m.

I. Welcome
II. Financial Update
III. Legislative Update
IV. Program Update
V. Board Program—Advancing Science, Technology, Engineering, and Mathematics (STEM): Libraries, Museums, and Makerspaces

(Open to the Public)

Afternoon Session — 12:45 p.m. to 1:45 p.m.

VI. Board Discussion—IMLS's Native American/Native Hawaiian Services Programs and Museum Grants for African American History and Culture

(Open to the Public)

Executive Session—1:45 p.m.–2:15 p.m. (Closed to the Public)

FOR FURTHER INFORMATION CONTACT: Katherine Maas, Program Specialist, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4798.

Dated: November 6, 2013.

Nancy Weiss,

General Counsel.

[FR Doc. 2013–27036 Filed 11–12–13; 8:45 am]

BILLING CODE 7036–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting, Corporate Administration Committee Meeting of the Board of Directors

TIME & DATE: 3:30 p.m., Thursday, November 21, 2013.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street, NE., Washington DC 20002.

STATUS: Open.

CONTACT PERSON: Jeffrey Bryson, General Counsel/Secretary, (202) 760–4101; *jbryson@nw.org.*

AGENDA

I. Call To Order
II. Officer Performance Reviews
III. Update on Structure
IV. Human Resources
  A. RFP—Board Appointee Compensation
  B. Employee Performance Management
  C. Health Care Provider/Open Enrollment
  D. EEO Report
  E. Retirement Plan Audit
V. Adjournment

Jeffrey T. Bryson,

General Counsel.

[FR Doc. 2013–27252 Filed 11–8–13; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–034 and 52–035; NRC–2008–0594]

Luminant Generation Company, LLC

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Combined license applications; receipt.

SUMMARY: The NRC is giving notice once each week for four consecutive weeks of a combined license (COL) application from Luminant Generation Company, LLC. (Luminant).

ADDRESSES: Please refer to Docket ID NRC–2008–0594 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0594. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The ADAMS accession number for the initial application cover letter for Comanche Peak Nuclear Power Plant, Units 3 and 4 is ML082680250. The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html.*
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Stephen Monarque, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, at 301–415–1544 or via email at *Stephen.Monarque@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following party has filed applications for COLs with the NRC, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal* Regulations (10 CFR) Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants:''

1. On September 19, 2008, Luminant submitted an application for COLs for two United States-Advanced Pressurized Water Reactors designated as Comanche Peak Nuclear Power Plant, Units 3 and 4, in Somervell County, Texas.

This COL application is currently under review by the NRC staff.

An applicant may seek a COL in accordance with Subpart C of 10 CFR Part 52. The information submitted by the applicant includes certain administrative information, such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. These notices are being provided in accordance with the requirements in 10 CFR 50.43(a)(3).

Dated at Rockville, Maryland, this 6th day of November 2013.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 2, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–27133 Filed 11–12–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0212: NRC–2013–0211]

Environmental Issues Associated With New Reactors and Specific Environmental Guidance for Integral Pressurized Water Reactors Reviews

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; re-opening of comment period.

SUMMARY: On September 13, 2013, the U.S. Nuclear Regulatory Commission (NRC) published a request for public comment on draft Interim Staff Guidance (ISG) ESP/COL–ISG 026, ''Interim Staff Guidance on Environmental Issues Associated with New Reactors'' and draft ISG ESP/COL–ISG–027, ''Interim Staff Guidance on Specific Environmental Guidance for iPWR Reviews.'' The purpose of this ISG is to clarify the NRC guidance and application of NUREG–1555, Environmental Standard Review Plan: ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants.'' The public comment period was originally scheduled to close on October 15, 2013. The Nuclear Energy Institute (NEI) submitted a letter on September 17, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13268A343), requesting an extension of the public comment period until November 15, 2013, on these two guidance documents. The NRC has decided to re-open the public comment period on these two ISG documents to allow more time for members of the public to assemble and submit their comments.

DATES: The comment period has been re-opened and now closes on November 15, 2013. The NRC agreed to extend the comment period, but was unable to inform the public because of the furlough. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0212 for ESP/COL–ISG–026 or NRC–2013–0211 for ESP/COL–ISG–027. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tanya Hood, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1387 or email: *Tanya.Hood@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0212 when contacting the NRC about the availability of information regarding ESP/COL–ISG–026 or Docket ID NRC–2013–0211 when contacting the NRC about ESP/COL–ISG–027. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search

for Docket ID NRC–2013–0212 for ESP/COL–ISG–026 or NRC–2013–0211 for ESP/COL–ISG–027.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced in this notice.

• *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 the respective Docket ID 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 the appropriate 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.

Dated at Rockville, Maryland, this 5th day of November 2013.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2013–27135 Filed 11–12–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–12–COL and 52–13–COL; ASLBP No. 09–885–08–COL–BD01]

Atomic Safety and Licensing Board; In the Matter of Nuclear Innovation North America LLC (South Texas Project Units 3 and 4); Notice of Hearing (Application for Combined Licenses)

November 6, 2013.

Before Administrative Judges: Michael M. Gibson, Chairman, Dr. Gary S. Arnold, Dr. Randall J. Charbeneau.

The Atomic Safety and Licensing Board hereby gives notice that it has rescheduled the evidentiary hearing to receive testimony and exhibits in a contested portion of this proceeding regarding the application of Nuclear Innovation North America LLC (NINA) for combined licenses that would authorize NINA to construct and operate two new nuclear reactor units on an existing site near Bay City, Texas.[1]

A. Matters To Be Considered at Evidentiary Hearing

This evidentiary hearing will concern contention FC–1, which alleges that statutory and regulatory prohibitions on foreign ownership, control, and domination forbid the licensing of proposed STP Units 3 and 4.

B. Date, Time, and Location of Evidentiary Hearing

The Board will conduct this evidentiary hearing[2] beginning at 9:00 a.m., Central Standard Time (CST) on Monday, January 6, 2014, at the Fourteenth Court of Appeals, 301 Fannin, Room 245, Houston, TX 77002. The hearing will continue on Tuesday, January 7, 2014, until 12:00 p.m. CST if necessary. It will be conducted in accordance with 10 CFR part 2, Subpart L.

Any members of the public who plan to attend the evidentiary hearing are advised that security measures are employed at the entrance to the courthouse, including searches of hand carried items such as briefcases or backpacks.

Some of the evidence necessary to resolve this contention implicates business information that NINA deems confidential. Although the Board anticipates that most of this hearing will be open to the public, at least a portion of this hearing will be closed to the public. The parties have further agreed that if the Board is unable to complete this hearing before 12:00 p.m. CST on Tuesday, January 7, 2014, it will continue any remaining non-public portions of the hearing at the office of Morgan, Lewis & Bockius, 1000 Louisiana St., Suite 4000, Houston, TX 77002.

C. Submitting Written Limited Appearance Statements

As provided in 10 CFR 2.315(a), any person (other than a party or the representative of a party to this proceeding) may submit a written statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board or the parties in their consideration of the issues in this proceeding.

Such a written limited appearance statement may be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001,

Fax: (301) 415–1101 (verification (301) 415–1966),

Email: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written limited appearance statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge Michael M. Gibson, Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001,

Fax: (301) 415–5599 (verification (301) 415–7332),

Email: Michael.Gibson@nrc.gov and *Carter.Thurman@nrc.gov.*

D. Availability of Documentary Information Regarding the Proceeding

NINA's application and various Staff documents relating to the application are available on the NRC Web site at *http://www.nrc.gov/reactors/new-reactors/col/south-texas-project.html.*

These and other documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD 20852, or

[1] The evidentiary hearing was originally scheduled to begin on October 16, 2013, at the United States District and Bankruptcy Courthouse, Courtroom 11B, 515 Rusk Avenue, Houston, TX 77002. However, due to the lapse of federal funding and resulting government shutdown, that hearing was postponed. This order is rescheduling that postponed hearing.

[2] NINA, the NRC Staff, and Intervenors will be parties to the hearing and will present witnesses and evidentiary material.

electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at (800) 397–4209 or (301) 415–4737 (available between 8:00 a.m. and 4:00 p.m., Eastern Time (ET), Monday through Friday except federal holidays), or by email to *pdr@nrc.gov*.

It is so *ordered.*

For the Atomic Safety and Licensing Board. Rockville, Maryland.

Dated: November 6, 2013.

Michael M. Gibson,

Chairman, Administrative Judge.

[FR Doc. 2013–27145 Filed 11–12–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meetings Notice

DATE: Weeks of November 11, 18, 25, December 2, 9, 16, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 11, 2013

There are no meetings scheduled for the week of November 11, 2013.

Week of November 18, 2013—Tentative

There are no meetings scheduled for the week of November 18, 2013.

Week of November 25, 2013—Tentative

There are no meetings scheduled for the week of November 25, 2013.

Week of December 2, 2013—Tentative

There are no meetings scheduled for the week of December 2, 2013.

Week of December 9, 2013—Tentative

There are no meetings scheduled for the week of December 9, 2013.

Week of December 16, 2013—Tentative

There are no meetings scheduled for the week of December 16, 2013.

* * * * *

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 Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

Dated: November 7, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–27279 Filed 11–8–13; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Notice; December 4, 2013 Public Hearing.

TIME AND DATE: 2:00 p.m., Wednesday, December 4, 2013.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 2:00 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, November 27, 2013. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, November 27, 2013. Such statement must be typewritten, double spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via email at *Connie.Downs@opic.gov.*

Dated: November 8, 2013.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2013–27280 Filed 11–8–13; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 30776; File No. 812–14133]

Transamerica Life Insurance Company, et al; Notice of Application

November 6, 2013.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'') granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder.

APPLICANTS: Transamerica Life Insurance Company (''TLIC''), Transamerica Financial Life Insurance Company (''TFLIC'') (each a ''Company'' and collectively, the ''Companies''); Separate Account VA B (''TLIC Account''), Separate Account VA BNY (''TFLIC Account'') (each an ''Account'' and collectively, the ''Accounts''); and

Transamerica Capital, Inc. (''TCI''). The Companies, the Accounts and TCI are collectively referred herein as the ''Applicants.''

SUMMARY OF APPLICATION: The Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit, under specified circumstances, the recapture of certain bonus credits applied to purchase payments made with respect to certain flexible premium variable annuity policies issued by the Companies.

DATES: *Filing Date:* The application was filed on March 14, 2013, and amended and restated applications were filed on June 5, 2013 and on October 11, 2013.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 2, 2013, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Transamerica Life Insurance Company and Separate Account VA B, Transamerica Financial Life Insurance Company and Separate Account VA BNY, 4333 Edgewood Road NE., Cedar Rapids, IA 52499–4240; Transamerica Capital, Inc., 4600 South Syracuse Street, Suite 1100, Denver CO 80237.

FOR FURTHER INFORMATION CONTACT: Michelle Roberts, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Insured Investments Office, Division of Investment Management at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an Applicant using the Company name box, at http://www.sec.gov/search/search.htm or by calling (202) 551–8090.

Applicants' Representations

1. Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit, under specified circumstances, the recapture of certain bonus credits applied to purchase payments made with respect to certain variable annuity policies, including endorsements thereto, and certificates under group policies marketed under the names ''Transamerica Variable Annuity Series—X Share,'' ''Members Variable Annuity Series—X Share,'' and ''Partners Variable Annuity Series—X Share'' (''Policies'') as described in the application as well as variable annuity policies, including endorsements thereto, and certificates under group policies issued by the Companies in the future that are substantially similar in all respects to the Policies (''Future Policies''). The Applicants seek to recapture bonus credits from the Policies where the bonus credit was applied within the preceding twelve (12) months and the owner withdraws from or surrenders the Policy and there is no surrender charge or an otherwise applicable surrender charge (or contingent deferred sales load) is waived, because (i) an owner exercises his or her ''free look'' option; (ii) a death benefit is payable; (iii) an owner annuitizes the Policy; or (iv) an owner exercises a provision or rider providing for waiver of the surrender charge under the Nursing Care and Terminal Condition Withdrawal Option or the Unemployment Waiver as defined in the Policy. The order would also apply to any other separate accounts of the Companies or their affiliated companies that are controlling, controlled by, or under common control with the Companies (''Future Accounts'') that support Future Policies. Applicants also request that the order being sought extend to any Financial Industry Regulatory Authority (''FINRA'') member broker-dealers which may, in the future, act as principal underwriter of such Policies or Future Policies (''Future Underwriters'') and any successors in interest [1] to the Applicants.

2. TLIC is a stock life insurance company organized under the laws of the state of Iowa. TFLIC is a stock life insurance company organized under the laws of the state of New York. The TLIC Account is registered under the 1940 Act as a unit investment trust (File No. 811–06032). Interests in the TLIC Account offered through certain flexible premium variable annuity policies have been registered under the Securities Act of 1933 (''1933 Act'') on Form N–4 (File No. 333–185573).

3. The TFLIC Account is registered under the Act as a unit investment trust (File No. 811–08750). Interests in the TFLIC Account offered through certain flexible premium variable annuity policies have been registered under the 1933 Act on Form N–4 (File No. 333–185574).

4. Each Account is comprised of subaccounts established to receive and invest net purchase payments under the Policies (each a ''Subaccount'').

5. TCI, an affiliate of the Companies, is the principal underwriter and the distributor of the Policies for the Accounts. TCI is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of FINRA.

6. TLIC issues the Policies in all states except New York. TFLIC issues the Policies only in New York. The Policies provide for accumulation of values on a variable basis, fixed basis, or both during the accumulation period, and may provide settlement or annuity payment options on a variable basis, fixed basis, or both. The Policies may be purchased on a non-qualified tax basis. The Policies may also be purchased and used in connection with plans qualifying for favorable federal income tax treatment.

7. The owner determines in the application or transmittal form for a Policy how the net premium payments will be allocated among the Subaccounts of the Accounts and any available guaranteed period options or dollar cost averaging options of the fixed account. The policy value will vary with the investment performance of the Subaccounts selected, and the owner bears the entire risk for amounts allocated to an Account.

8. For each premium payment an owner makes, the Companies may add a bonus credit equal to a percentage of the premium payment to the owner's policy value. The Companies do not assess a specific charge for the bonus credit. The Companies expect to use a portion of the mortality and expense risk charge, the administrative fee, and/or the surrender charge to pay for the bonus credit. The credit percentage is determined by the annuitant's age at the time of each premium payment. Currently, the bonus credit as a percentage of each premium payment equals 5.5% (ages 0–59), 5.0% (ages 60–69), 4.0% (ages 70–79) and 2.0% (ages 80+). The percentage could vary based on state laws. The Companies may vary the bonus credit percentage from premium to premium and/or based on the annuitant's attained age at the time

[1] Successors in interest is defined as any entity or entities that result from a reorganization into another jurisdiction, a change in control or a change in the type of business organization.

a premium payment is made, but the bonus credit will never be less than 0.25% nor more than 7%.

9. An owner may return his or her Policy for a refund. This is called the ''Right to Cancel Period'' or ''Free Look Right.'' An owner will generally have 10 days to return his or her Policy depending on the state where the Policy is issued. The Companies will not assess surrender charges against a Policy returned during the Right to Cancel Period.

10. Under the Policies, each Company will pay a death benefit under certain circumstances. The Policies also offer an optional Additional Death Distribution rider and an Additional Death Distribution+ rider which pay an additional death benefit amount when a death benefit is payable during the accumulation phase. A discussion of the death benefits offered under the Policies is included in the application. The Applicants may add other optional death benefit riders to the Policies in the future.

11. Policy owners may select one of several optional living benefits. The Policies offer three guaranteed lifetime withdrawal benefits, which guarantee a minimum amount may be withdrawn annually from the Policy for the lifetime of the annuitant, regardless of market performance and even if these withdrawals reduce the policy value to zero. The Policies also offer the Guaranteed Principal Solution Rider, which provides a guaranteed minimum accumulation benefit and a guaranteed minimum withdrawal benefit. The guaranteed minimum accumulation benefit guarantees that the policy value will equal a specified value on a specified future date. A discussion of the features of the Policies, including the optional living benefits, is included in the application. The Applicants may add other living benefit riders to the Policies in the future.

12. An owner may transfer policy values. Transfers may be limited, or a charge may apply. Transfers and withdrawals from a guaranteed period option of the fixed account prior to the end of the guaranteed period are generally subject to an excess interest adjustment (except for policies issued in New York by TFLIC). This adjustment will also be made to amounts that an owner applies to an annuity payment option.

13. An owner may surrender a Policy or make a partial withdrawal from the policy value during the Accumulation Period. If an owner surrenders a Policy or takes a partial withdrawal, a Company may deduct a surrender charge to compensate it for expenses relating to sales, including commissions to registered representatives and other promotional expenses. An owner generally may be permitted to withdraw certain limited amounts free of a surrender charge. The following charts show the surrender charges that apply to the Policies:

Number of years since premium payment date	Surrender charge (as a percentage of premium payment withdrawn)
1	9
2	8
3	7
4	6
5	5
6	4
7	3
8	2
9	1
10+	0

A Company will waive the surrender charges if an owner withdraws money under the Nursing Care and Terminal Condition Withdrawal Option or the Unemployment Waiver. Those riders are discussed in the application.

14. In states where permitted, if an owner takes a surrender or withdrawal under the Nursing Care and Terminal Condition Withdrawal Option or Unemployment Waiver, the Company will reduce the amount of the surrender value by the total bonus credits the Company credited to an owner's policy value during the 12 months before the surrender or withdrawal.

15. The owner may elect or change an annuity payment option during the lifetime of the annuitant. The first annuity payment will be made as of the annuity commencement date. The owner generally may change the annuity commencement date, subject to specified limits. The amount of each annuity payment under the annuity payment options will depend on the sex (if allowed) and age of the annuitant (or annuitants) at the time the first payment is due and the payment option.

16. The Companies deduct various fees and charges, which may include a daily mortality and expense risk fee; a daily administrative charge; an annual service or policy charge; premium taxes; surrender charges (contingent deferred sales loads); and fees for optional benefits or riders.

Applicants' Legal Analysis

1. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request exemptions for the Policies described in the application, and for Future Policies that are substantially similar in all material respects to the Policies described herein, from Sections 2(a)(32), 22(c), and 27(i)(2)(a) of the Act, and Rule 22c–1 thereunder, pursuant to Section 6(c), to the extent necessary to recapture the bonus credit applied to a premium payment within the preceding twelve (12) months when the owner withdraws from or surrenders the Policy and there is no surrender charge, or an otherwise applicable surrender charge (or contingent deferred sales load) is waived, because: (i) An owner exercises his or her ''free-look'' option, (ii) a death benefit is payable, (iii) an owner annuitizes the Policy; or (iv) an owner exercises a provision or rider providing for the waiver of the surrender charge under the Nursing Care and Terminal Condition Withdrawal Option or the Unemployment Waiver as defined in the Policy.

3. Section 27(i) provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, nor to the sponsoring insurance company and principal underwriter of such account, except as provided for in Section 27(i)(2)(A) of the 1940 Act. Section 27(i)(2)(A), in pertinent part, makes it unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security.

4. Section 2(a)(32) of the 1940 Act defines ''redeemable security'' as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

5. The Applicants submit that the bonus recapture provisions in the Policies do not deprive the owner of his or her proportionate share of the issuer's current net assets. An owner's right to the bonus credit will vest in full one year after a Company applies the bonus credit. Until that time, a Company retains the right and interest in the dollar amount of any unvested bonus credit amount. Thus, when a Company recaptures a bonus credit, it is only retrieving its own assets, and because an owner's interest in the bonus credit is

not vested, such owner would not be deprived of a proportionate share of the Account's assets (the issuer's current net assets) in violation of Section 2(a)(32). However, to avoid uncertainty as to full compliance with the 1940 Act, the Applicants request an exemption from the provisions of Sections (2)(a)(32) and 27(i)(2)(A) to the extent deemed necessary to permit them to recapture the bonus credit under the Policies and Future Policies.

6. Section 22(c) of the 1940 Act states that the Commission may make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same ends as contemplated by Section 22(a). Rule 22c–1, promulgated under Section 22(c) of the 1940 Act, in pertinent part, prohibits a registered investment company issuing a redeemable security (and a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, any such security) from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

7. The Applicants note that a Company's addition of the bonus credit might arguably be viewed as resulting in an owner purchasing a redeemable security for a price below the current net asset value. Further, a Company's recapture of the bonus credit might arguably be viewed as resulting in the redemption of a redeemable security for a price other than one based on the current net asset value of an Account. The Applicants submit, however, that the bonus credit does not violate Section 22(c) and Rule 22c–1.

8. An owner's interest in his or her policy value or in an Account would always be offered at a price next determined on the basis of net asset value. The granting of a bonus credit does not reflect a reduction of that price. Instead, the Companies will purchase with their own general account assets an interest in an Account equal to the bonus credit. Applicants submit that because the bonus credit will be paid out of Company assets, not Account assets, no dilution will occur as a result of the credit.

9. The Applicants contend that the recapture of the bonus credit does not involve either of the evils that the Commission intended to eliminate or reduce with Rule 22c–1; namely, (1) the dilution of the interests of other security holders and (2) speculative trading practices that are unfair to such holders. The Applicants note that these evils were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined, as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding mutual fund shares.

10. The Applicants submit that the proposed recapture of the bonus credit does not pose such threat of dilution. The bonus credit recapture will not alter an owner's net asset value. Each Company will determine an owner's net cash surrender value under a Policy in accordance with Rule 22c–1 on a basis next computed after receipt of an owner's request for surrender (likewise, the calculation of death benefits and annuity payment amounts will be in full compliance with the forward pricing requirement of Rule 22c–1). The amount recaptured will equal the amount of the bonus credit that a Company paid out of its general account assets. Although an owner will retain any investment gain attributable to the bonus credit, a Company will determine the amount of such gain on the basis of the current net asset value of the Subaccount. Thus, no dilution will occur upon the recapture of the bonus credit.

11. The Applicants further submit that the other harm that Rule 22c–1 was designed to address, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of a Company's recapture of the bonus credit.

12. For the reasons set forth above, Applicants submit that Rule 22c–1 and Section 22(c) should have no application to the bonus credit as neither of the harms that Rule 22c–1 was designed to address are found in the recapture of the bonus credit. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the bonus credit under the Policies and Future Policies.

13. The Applicants contend that a Company's recapture of the bonus credit is designed to prevent anti-selection against that Company. The risk of anti-selection would be that an owner could make significant premium payments into the Policy solely in order to receive a quick profit from the credit. By recapturing a bonus credit, a Company protects itself against the risk that an owner will make such large premium payments, receive a bonus credit, and then withdraw his or her money from the Policy under one of the circumstances described herein. Furthermore, a Company's recapture of the bonus credit is designed to protect the Company against the risk that owners will not hold the Policy for a sufficient period of time for the Company to recover its costs related to providing the bonus credit.

14. The Applicants also contend that it would be inherently unfair to allow an owner exercising the free-look privilege in a Policy to retain the bonus credit when returning the Policy for a refund after a period of only a few days (usually 10 or less). If a Company could not recapture the bonus credit, individuals might purchase a Policy with no intention of retaining it, and simply return it for a quick profit. By recapturing the bonus credit, a Company will prevent such individuals from doing so.

15. Applicants seek relief requested herein not only for themselves with respect to the Policies, but also with respect to Future Accounts or Future Policies. In addition, Applicants seek relief herein with respect to Future Underwriters (i.e., a class consisting of FINRA member broker-dealers which may in the future act as principal underwriter of the Policies and Future Policies). Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in section 6(c) of the 1940 Act and Commission precedent.

16. Applicants represent that the terms of the relief requested with respect to any Policies or Future Policies issued by the Companies and funded by the Accounts or Future Accounts are consistent with the standards set forth in Section 6(c) of the 1940 Act and Commission precedent. Applicants state that, without the requested class relief, exemptive relief for any Future Account, Future Policy or Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed herein. Applicants state that if the Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs

from preparing such additional requests for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the Companies or their affiliates to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants submit that elimination of the delay and the expense of repeatedly seeking exemptive relief would enhance each Applicant's ability to effectively take advantage of business opportunities as such opportunities arise.

17. All entities that currently intend to rely on the requested order are named as Applicants. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in this Application.

Conclusion

For the reasons summarized above, Applicants represent that: the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act; and their request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27039 Filed 11–12–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70349]

Order Exempting Broker-Dealers Participating in the Proposed Global Offering of Meridian Energy Limited From the Arranging Prohibitions of Section 11(d)(1) of the Exchange Act

September 9, 2013.

By letter dated September 6, 2013 (''Request''), Deutsche Bank AG, New Zealand Branch/Craigs Investment Partners Limited, Goldman Sachs New Zealand and Macquarie Capital (New Zealand) Limited/Macquarie Securities (NZ) Limited (together, ''Joint Lead Managers'' or ''JLMs'') and their respective U.S. broker-dealer affiliates (''U.S. Selling Agents'') requested that the Securities and Exchange Commission (''Commission'') grant an exemption order pursuant to Section 36(a) of the Exchange Act of 1934 (''Exchange Act'').[1]

The Request pertains to the application of the arranging prohibitions of Section 11(d)(1) of the Exchange Act[2] to the proposed U.S. offering, as described in your Request (the ''Proposed U.S. Offering'') by Her Majesty the Queen in right of New Zealand, acting by and through the Minister of Finance and the Minister for State Owned Enterprises (the ''Crown''), of ordinary shares (the ''Shares'') of Meridian Energy Limited (''Meridian'' or the ''Company''), in connection with Meridian's proposed global initial public offering (''Proposed Global Offering'').

You represent that the Proposed Global Offering, including the Proposed U.S. Offering, will be conducted on an installment payment basis in the form of installment receipts (''Installment Receipts''), with the purchase price to be payable in two installments. The securities to be offered and sold in the Proposed U.S. Offering will not be registered under the Securities Act of 1933 (the ''Securities Act''), but instead will be offered and sold to persons reasonably believed to be ''qualified institutional buyers'' (''QIBs''), as defined in Rule 144A[3] under the Securities Act, in transactions exempt from the registration requirements of the Securities Act pursuant to Rule 144A thereunder. As a result, the Shares offered and sold in the Proposed U.S. Offering would be represented by Installment Receipts. The Proposed U.S. Offering of Installment Receipts may be deemed to involve a ''new issue'' for purposes of Section 11(d)(1). Thus, the Joint Lead Managers' and the U.S. Selling Agents' participation in the Proposed U.S. Offering of Meridian may be within the scope of the arranging prohibitions of Section 11(d)(1) of the Exchange Act.

You have requested that the Commission grant an exemption pursuant to Section 36(a) of the Exchange Act from the arranging prohibitions of Section 11(d)(1). You note that the exemption requested is in all material respects identical to the relief that the Commission has previously granted in connection with New Zealand and Australian global offerings that have been conducted on an installment payment basis.[4]

Section 11(d)(1) of the Exchange Act generally prohibits a broker-dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, on shares of new issue securities, if the broker-dealer participated in the distribution of the new issue securities within the preceding 30 days. The Joint Lead Managers and their U.S. Selling Agents are broker-dealers. The Proposed U.S. Offering of Installment Receipts in the manner described in your Request may be deemed to involve an extension of credit, and the activities of the Joint Lead Managers and the U.S. Selling Agents participating in the Proposed U.S. Offering might, therefore, be deemed to be an arrangement of credit subject to Section 11(d)(1) of the Exchange Act.

Based on the facts and representations set forth in your Request, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant, and hereby grants, to the Joint Lead Managers and the U.S. Selling Agents participating in the Proposed Global Offering by the Crown, of Shares of Meridian a limited exemption pursuant to Section 36(a) of the Exchange Act from the prohibitions on arranging for the extension of credit contained in Section 11(d)(1) of the Exchange Act. In the absence of the exemption, Section 11(d)(1) would effectively preclude the Joint Lead Managers and U.S. Selling Agents from selling the Installment Receipts in the United States since any brokers or dealers participating in the Proposed U.S. Offering may be deemed to be arranging credit in the form of the Installment Receipts that they offer and sell to QIBs. The exemption will allow sophisticated U.S. investors that meet the definition of a QIB to purchase the Installment Receipts in the Proposed U.S. Offering where the protections of the U.S. securities laws will be available, including the anti-fraud protections, rather than in overseas

[1] 15 U.S.C. 78mm(a).

[2] 15 U.S.C. 78k(d)(1).

[3] 17 CFR 230.144A.

[4] The Commission has exempted broker-dealers from the arranging provision of Section 11(d)(1) in similar offerings. *See* Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Commission, to William C.F. Kurz, Esq., Pillsbury Winthrop Shaw Pittman LLP re: Telstra Corporation Limited, dated October 5, 2006; Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Commission, to William C.F. Kurz, Esq., Pillsbury Winthrop Shaw Pittman LLP re: Macquarie Media Holdings Limited and Macquarie Media Trust, dated September 27, 2005; and Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Commission, to Frederick Wertheim, Esq., Sullivan & Cromwell LLP re: Spark Infrastructure Group, dated November 8, 2005 (revised November 29, 2005).

markets which may not afford the same protections. The exemption facilitates the domestic investment by sophisticated U.S. investors in a major foreign issuer and thus encourages the opening of the U.S. capital markets to foreign entities and the free flow of capital between the United States and New Zealand. The exemption may also help achieve a more liquid and efficient institutional resale market in the United States for the Installment Receipts.

This limited exemption is granted without necessarily agreeing or disagreeing with the analysis in your Request. It is based solely on the representations contained in your letter, particularly the following:

1. At the present time, the Crown owns 100% of the issued ordinary shares of Meridian and, as part of the Crown's partial privatization program with regard to its direct holding of the Shares, the Commonwealth intends to sell approximately 49% of its existing shareholding in Meridian.

2. It is anticipated that the gross proceeds of the Proposed Global Offering will be approximately NZ$2.5 billion (approximately US$2.0 billion using the NZ$/US$ exchange rate as of July 29, 2013);

3. No more than 20% of the total numbers of Shares being offered will be sold in the Proposed U.S. Offering, and the Proposed U.S. Offering will only be open to sophisticated U.S. investors that are QIBs within the meaning of Rule 144A under the Securities Act of 1933.

4. Not less than 50% of the total purchase price will be payable on or before the date of the initial closing of the Proposed Global Offering, and the remainder will be paid in a second final installment payable not more than 24 months after the initial closing of the Proposed Global Offering.

5. New Zealand will be the largest market for the Shares (with the current expectation that at least 70% of the Proposed Global Offering will be sold to New Zealand investors), and thus the New Zealand market will dictate the terms, and to a large extent the structure, of the Proposed Global Offering.

6. An offering-by-installment structure is a customary feature of large financings in New Zealand and Australia, and installment and partly paid structures have been used in numerous other transactions in New Zealand and Australia in recent years.

Conclusion

It is therefore ordered, that Joint Lead Managers and U.S. Selling Agents are exempt from the arranging prohibitions contained in Section 11(d)(1) in connection with the transactions involving the Shares under the circumstances described above and in your Request.

This exemption from Section 11(d)(1) is strictly limited to transactions involving the Shares under the circumstances described above and in your Request. Notably, this limited exemption from the arranging prohibitions contained in Section 11(d)(1) applies solely to the installment-payment structure of the Proposed Global Offering, and not to any other extension or maintenance of credit, or any other arranging for the extension or maintenance of credit, on the Shares or the Installment Receipts by a Joint Lead Manager or U.S. Selling Agent. In the event that any material change occurs with respect to any of the facts you have presented or the representations you have made, such transactions should be discontinued, pending presentation of the facts for our consideration. We express no view with respect to any other questions the proposed transactions may raise, including, but not limited to, the applicability of other federal and state laws or rules of any self-regulatory organization to the Proposed Global Offering.

You request, under 17 CFR 200.81(b), that your Request and this response be accorded confidential treatment until after the Proposed Global Offering is made public, or 60 days from the date of your Request, whichever first occurs. Because we believe that your request for confidential treatment is reasonable and appropriate, we grant it.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27100 Filed 11–12–13; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 30–3(a)(19) and 17 CFR 200.30–3(a)(62).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70818; File No. SR–NYSEArca–2013–114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Regarding the Applicable Lead Market Maker Rights Fee for Low-Volume Issues

November 6, 2013.

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 October 31, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding the applicable Lead Market Maker (''LMM'') rights fee for low-volume issues within the first six months of being listed on the Exchange. 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding the applicable LMM rights fee for low-volume issues within the first six months of being listed on the Exchange. The Exchange proposes to implement the fee change effective November 1, 2013.

OTP Firms acting as LMMs are assessed a fee for LMM rights for each appointed issue.[4] The LMM rights fee is based on the average national daily volume (''ADV'') of Customer contracts traded in that issue.[5] The LMM rights fees are assessed at the end of each month on each issue that an LMM holds in its LMM appointment. Currently, the LMM rights fees are charged as follows:

ADV of customer contracts	Monthly issue fee
0–100	$125
101–1,000	45
1,001 to 2,000	75
2,001 to 5,000	200
5,001 to 15,000	375
15,001 to 100,000	750
Over 100,000	1,500

The Exchange introduced the current lowest-volume LMM rights fee tier on October 1, 2013 and set the corresponding $125 fee at a level that is designed to balance the Exchange's revenue with the cost of listing low-volume issues.[6] This lowest-volume LMM rights fee tier currently applies to (i) issues listed on the Exchange on or after October 1, 2013 or (ii) issues listed before October 1, 2013 that are reallocated to a new LMM on or after October 1, 2013. All other issues are grandfathered, such that the LMM rights fee for the next highest tier applies instead, which is currently $45.

The Exchange proposes that, for issues listed on the Exchange on or after October 1, 2013 for which the lowest-volume LMM rights fee tier would apply (i.e., issues with an ADV of Customer contracts of 0–100 contracts), the fee for the next highest tier would apply instead for a period of six months from the date of listing on the Exchange if, at the time of initial listing, the issue is not listed on any other market. After six months from the date of listing on the Exchange, the standard fee for the lowest-volume LMM rights fee tier would apply.[7] The Exchange proposes that this six-month period also apply to a new issue listed on the Exchange between October 1, 2013 and the implementation date of this proposal (i.e., November 1, 2013) if the issue was not listed on another market at the time of initial listing on the Exchange, except that the proposed six-month period would be decreased by the amount of time that the issue has already been listed on the Exchange.[8]

The Exchange also proposes to make certain non-substantive changes to better organize the text that accompanies the LMM rights fee table in the Fee Schedule, which was added when the Exchange introduced the lowest-volume LMM rights fee tier.[9] First, the Exchange proposes to delete the reference to ''grandfathering,'' while at the same time adding detail to specify that this sentence is referring to issues listed before October 1, 2013 with an ADV of Customer contracts of 0–100. The ''grandfathering'' reference was added to explain the fees applicable to issues that were already listed on the Exchange when the lowest-volume LMM rights fee tier was introduced,[10] but it is not necessary and could be confusing in light of the six-month period proposed herein for newly-listed issues on the Exchange. Second, the Exchange proposes to specify that the reference to ''existing options'' refers to issues listed on the Exchange before October 1, 2013. Finally, the Exchange proposes to clearly distinguish the two categories of issues for which the fee for the lowest-volume LMM rights fee tier would apply, which would be (i) a new issue listed on the Exchange on or after October 1, 2013, except that the fee for the next highest tier would apply during the first six months after listing on the Exchange if the issue is not listed on any other market as of the date of listing, or (ii) an issue that was listed on the Exchange before October 1, 2013 that is reallocated to a new LMM on or after October 1, 2013.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that LMMs would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[12] 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.

The Exchange believes that the proposed change is reasonable because applying the lower LMM rights fee of $45 to LMMs appointed to issues with an ADV of Customer contracts of 0–100 contracts would create an incentive for LMMs to request appointments during the first six months that such low-volume issues are listed on the Exchange. This would provide a specific period of time during which trading interest in the newly-listed issues would be generated, but without the appointed LMMs being subject to the higher LMM rights fee that corresponds to the lowest-volume LMM rights fee tier. The Exchange believes that this may increase the likelihood of LMMs seeking appointments to low-volume issues during their initial listing on the Exchange, which would contribute to increased levels of available liquidity on the Exchange and therefore benefit investors.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would apply to all new issues listed on the Exchange with an ADV of Customer contracts of 0–100 contracts, and all LMMs appointed thereto, during the first six months of listing on the Exchange if the issue is not listed on another market at the time of initial listing on the Exchange. The proposed change is also equitable and not unfairly discriminatory because the overall quality of the Exchange's market could benefit from the liquidity provided by LMMs appointed to these low-volume issues during the first six months of listing on the Exchange, which would contribute to the Exchange balancing its cost and revenue when listing such low-volume issues.

[4] ''OTP Firm'' is defined in NYSE Arca Rule 1.1(r). ''Market Maker'' is defined in NYSE Arca Rule 6.32. ''Lead Market Maker'' is defined in NYSE Arca Rule 6.82.

[5] The term ''Customer'' excludes a broker-dealer. *See* NYSE Arca Rule 6.1A(a)(4).

[6] *See* Securities Exchange Act Release No. 70503 (September 25, 2013), 78 FR 60364 (October 1, 2013) (SR–NYSEArca–2013–95).

[7] As is currently the case, if the ADV of Customer contracts for the issue corresponded to a different LMM rights fee tier, the corresponding fee for that different tier would apply, including during the six-month period proposed herein.

[8] For example, if a new issue was listed on the Exchange on October 1, 2013 and qualifies for the lowest-volume LMM rights fee tier, beginning November 1, 2013 the fee for the next highest tier would apply instead for the next five months. The standard fee for the lowest-volume LMM rights fee tier would apply to such issue during October 2013. The Exchange is not proposing any retroactive fees as part of this filing.

[9] *See supra* note 6.

[10] *Id.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

The proposed change is also equitable and not unfairly discriminatory because of the uncertainty surrounding issues to which this proposed change would apply. Specifically, because such issues would not be listed on any other market at the time an LMM would be appointed, such an LMM would not be able to predict that the ADV of Customer contracts would correspond to the lowest-volume LMM rights fee tier and therefore that the higher corresponding fee would apply. The Exchange believes that the proposed change would account for this uncertainty by providing LMMs with a specified period of time after an issue is listed on the Exchange, during which the higher fee for the lowest-volume LMM rights fee tier would not apply. The Exchange believes that six months is a reasonable period of time because new issues may take several months to generate meaningful trading volume on the Exchange. This could be compounded if other option exchanges do not list the new issue on their markets. However, even when another option exchange lists the new issue within a short period of time after its initial listing on the Exchange, trading interest in such issue could still take several months to increase to a point where the Exchange believes it would be reasonable and equitable to apply the higher fee for the lowest-volume LMM rights fee tier.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] 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. The proposed change would enhance competition by creating an incentive for LMMs to seek appointments in low-volume issues that are not listed on other markets. The Exchange does not believe that the proposed change would burden competition among LMMs because LMMs apply for such appointments based on their own business decisions.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually 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.

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)[14] of the Act and subparagraph (f)(2) of Rule 19b–4[15] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–114 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–NYSEArca–2013–114. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–114, and should be submitted on or before December 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27042 Filed 11–12–13; 8:45 am]

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[13] 5 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70816; File No. SR–NYSEMKT–2013–86]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt Commentary .03 to Rule 980NY To Limit the Volume of Complex Orders by a Single ATP Holder During the Trading Day

November 6, 2013.

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 October 28, 2013, 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. On November 5, 2013, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to adopt as Commentary .03 to Rule 980NY, which was reserved, a Complex Order Table Cap, to limit the volume of complex orders by a single ATP Holder during the trading day. 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 the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt as Commentary .03 to Rule 980NY, which was reserved, a Complex Order Table Cap, to limit the volume of complex orders entered by a single ATP Holder during the trading day. The Exchange believes that the Complex Order Table Cap would help maintain a fair and orderly market because it is a system protection tool designed to assist the Exchange in preventing any single ATP Holder from utilizing more than a specified percentage of the complex order table during the trading day.

Rule 980NY governs trading of ''Complex Orders'' [4] on the NYSE MKT System (''Electronic Complex Orders''). Rule 980NY(c)(i) currently provides that Electronic Complex Orders accepted in the Exchange's Complex Matching Engine (''CME'') [5] are executed automatically against other Electronic Complex Orders in the Consolidated Book,[6] unless individual orders or quotes in the Consolidated Book can execute against incoming Electronic Complex Orders, subject to specified conditions, in which case such individual orders and quotes have priority. Rule 980NY(c)(ii) currently provides that Electronic Complex Orders in the CME that are not marketable against other Electronic Complex Orders automatically execute against individual quotes or orders in the Consolidated Book, provided that the Electronic Complex Orders can be executed in full or in a permissible ratio by the individual quotes or orders.

Rule 980NY(c)(iii) currently provides that ATP Holders have the ability to view the Electronic Complex Orders in the Consolidated Book via an electronic interface and may submit orders to the CME to trade against orders in the Consolidated Book.[7] Current Rule 980NY does not impose any cap on the volume of Electronic Complex Orders entered by ATP Holders.

The Exchange ranks and tracks Electronic Complex Orders in the Consolidated Book in a ''complex order table.'' The complex order table has sufficient capacity (i.e., the maximum allowable Electronic Complex Orders during the trading day) to accept all Complex Orders submitted by all ATP Holders under normal operating conditions. However, that capacity is not unlimited.[8] Thus, if an ATP Holder were to experience a systems malfunction that led to the entry of an inordinate number of Electronic Complex Orders, the entire capacity of the complex order table could potentially be utilized solely by that one ATP Holder. If this were to happen, the Exchange would have to reject all subsequent Electronic Complex Orders—from all ATP Holders—exceeding the total capacity of the complex order table on that trading day. Under current Rule 980NY, there is no limitation to the number of Electronic Complex Orders that a single ATP Holder may submit, which, as explained above, could result in a single ATP Holder utilizing the entire capacity of the complex order table. Thus, the Exchange is proposing to adopt as Commentary .03 to Rule 980NY a cap to prevent an ATP Holder from utilizing more than a specified percentage of the complex order table during the trading day (the ''Complex Order Table Cap'' or ''Cap'').

Pursuant to proposed Commentary .03 to Rule 980NY, if an ATP Holder exceeds the Complex Order Table Cap by submitting orders that comprise more than ''n%'' of the capacity of the complex order table, the Exchange would reject that ATP Holder's Electronic Complex Orders for the remainder of the trading day. Prior to breaching the Complex Order Table Cap, the ATP Holder would receive a warning to signal a potential breach. Specifically, when an ATP Holder utilizes more than ''n% − x'' of the complex order table, the ATP Holder's Electronic Complex Orders would be rejected until such time that the ATP

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed to delete the phrase ''at any given time'' located on page six of the Form 19b–4 and in the last paragraph on page 14 of the Exhibit 1 to the Form 19b–4.

[4] Rule 900.3NY(e) defines an Complex Order as ''any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.''

[5] Rule 980NY(a) defines the CME as ''the mechanism in which Electronic Complex Orders are executed against each other or against individual quotes and orders in the Consolidated Book.''

[6] Rule 900.2NY(14) defines the Consolidated Book as ''the Exchange's electronic book of limit orders for the accounts of Customers and broker-dealers, and Quotes with Size. All orders and Quotes with Size that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY.''

[7] Under Rules 980NY(c)(i)–(iii), incoming orders or quotes, or those residing in the Consolidated Book, that execute against Electronic Complex Orders are allocated pursuant to Rule964NY.

[8] The complex order table currently has the capacity to hold Electronic Complex Orders containing up to 16 million legs throughout the trading day.

Holder has notified the Exchange to re-enable the submission of Electronic Complex Orders.

If, however, the Complex Order Table Cap is breached (i.e., the ATP Holder submits orders in excess of ''n%'' of the complex order table), all Electronic Complex Orders submitted by that ATP Holder would be rejected for the remainder of the trading day. The Exchange would not reject any Electronic Complex Orders until after an ATP Holder had breached either the warning threshold (i.e., ''n% − x'') or the Cap. Thus, for example, if an ATP Holder submits an Electronic Complex Order that, once accepted, breaches the Cap, the Exchange would accept that order in its entirety and then would reject all subsequent Electronic Complex Orders from that ATP Holder for the remainder of the trading day. Unless determined otherwise by the Exchange and announced to ATP Holders via Trader Update, the specified percentage (i.e., ''n% [sic]) would be no less than 60%, and ''n% − x'' would be no less than 40%.[9]

While the Exchange does not currently anticipate having to adjust the proposed Cap, the Exchange recognizes that under certain market conditions (e.g., extreme volatility) or in unforeseen circumstances (e.g., unusual influx of market participants) the specified percentages prescribed by the Exchange may be overly restrictive at times and there could be situations where the Exchange may need to temporarily reduce the percentages applicable to the Cap to accommodate these situations. Thus, the Exchange proposes that in the interest of a fair and orderly market, the applicable percentages may be temporarily modified by a Trading Official to a percentage lower than prescribed. The Trading Officials are presently authorized to make similar determinations regarding such matters as position limits [10] and quote-width differentials.[11] Permitting a Trading Official to temporarily modify the percentages applicable to the Cap is consistent with their ability to recommend and enforce rules and regulations relating to trading, access, order, decorum, health, safety and welfare on the Exchange which contributes to the Exchange's obligation to maintain a fair and orderly market. If a Trading Official were to temporarily modify the percentages applicable to the Cap, the Exchange would contemporaneously announce the new settings to all ATP Holders via Trader Update. Temporary modifications to the percentages applicable to the Cap would be completed at the Exchange level. ATP Holders will not have to make any adjustments to proprietary systems to accommodate such modifications.

At present, the Exchange estimates that, on average, during the trading day, the volume of orders populating the complex order table from all ATP Holders combined is less than 40%. Because under normal operating conditions all ATP Holders combined utilize less than 40% of the complex order table, the Exchange believes that setting the Cap for a single ATP Holder at 60% would ensure that 40% of the complex order table—which is typically sufficient to accommodate all ATP Holder's orders—would remain accessible to the balance of ATP Holders and would not unfairly deny these ATP Holders access to the market. Moreover, the Exchange believes that a single ATP Holder would only exceed the Cap (or receive a warning of a near breach) in the event of a bona fide problem (e.g., a system error or malfeasance).

The Exchange believes that the Complex Order Table Cap would improve the efficiency of the Electronic Complex Order process and help maintain a fair and orderly market because it is designed as a system protection tool that will enable the Exchange to prevent any single ATP Holder from utilizing more than a specified percentage of the complex order table during the trading day.

Implementation

The Exchange will announce the implementation date of the proposed rule change by Trader Update to be published no later than 60 days following approval. The implementation date will be no later than 60 days following the issuance of the Trader Update.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that providing the Complex Order Table Cap removes impediments to, and perfects the mechanism of a free and open market because it would provide the Exchange with a system protection tool designed to assist in addressing the risk that a single ATP Holder could—either intentionally or inadvertently and erroneously—utilize the entire complex order table, effectively shutting out from the market for the remainder of the trading day all other ATP Holders' Electronic Complex Orders. By rejecting an ATP Holder's Electronic Complex Orders when that ATP Holder's orders encroach upon or exceed the Cap, the Exchange would ensure that the complex order table could fairly accommodate Electronic Complex Orders from all ATP Holders. The Cap would provide the ancillary benefit of reducing the risk that options orders submitted in error or otherwise by a single ATP Holder could clog the complex order table, potentially foreclosing the execution of valid orders. Thus, the Exchange believes that the Complex Order Table Cap would protect investors and the public interests because the Cap would ensure the optimal functioning of the complex order table by disabling the submission of Electronic Complex Orders of a single ATP Holder that has exceeded the Cap, thereby allowing the Exchange to accommodate Electronic Complex Orders from all other ATP Holders.

In addition, the Exchange believes that the implementation of the Cap would not unfairly deny any ATP Holder access to the market. Under normal operating conditions, the Electronic Complex Orders of all ATP Holders combined does not exceed 40% of the complex order table. Therefore, the Exchange believes that setting the Cap for a single ATP Holder at 60% would ensure that 40% of the complex order table—which is typically sufficient to accommodate all ATP Holder's orders—would remain accessible to the balance of ATP Holders and would not unfairly deny these ATP Holders access to the market. Moreover, the Exchange believes that a single ATP Holder would only exceed the Cap (or receive a warning of a near breach) in the event of a bono [sic] fide problem (e.g., a system error or malfeasance).

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. The Exchange believes the proposal will provide market participants with additional protection from erroneous executions. Thus, the Exchange does not

[9] Trader Updates are disseminated electronically to all ATP Holders.

[10] *See* Exchange Rule 904.05.

[11] *See* Exchange Rules 925NY(b)(5) and 925NY(c).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

believe the proposal creates any significant impact on competition.

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

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–NYSEMKT–2013–86 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–2013–86. 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 official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2013–86, and should be submitted on or before December 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27040 Filed 11–12–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70817; File No. SR–NYSEArca–2013–115]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt Commentary .03 to Rule 6.91 To Limit the Volume of Complex Orders by a Single OTP Holder or OTP Firm During the Trading Day

November 6, 2013.

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 October 28, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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. On November 5, 2013, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to adopt as Commentary .03 to Rule 6.91, which was reserved, a Complex Order Table Cap, to limit the volume of complex orders by a single OTP Holder or OTP Firm during the trading day. 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 the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt as Commentary .03 to Rule 6.91, which was reserved, a Complex Order Table Cap, to limit the volume of complex orders entered by a single OTP Holder or OTP Firm (collectively, ''OTPs'') during the trading day. The Exchange believes that the Complex Order Table Cap would help maintain a fair and orderly market because it is a system protection tool designed to assist the Exchange in preventing any single OTP from utilizing more than a specified percentage of the complex order table during the trading day.

Rule 6.91 governs trading of ''Complex Orders''[4] on the NYSE Arca

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed to delete the phrase ''at any given time'' located on page six of the Form 19b–4 and in the second full paragraph on page 14 of the Exhibit 1 to the Form 19b–4.

[4] NYSE Arca Options Rule 6.62(e) defines an Complex Order as ''any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.''

System (''Electronic Complex Orders''). Rule 6.91(a)(2)(i) currently provides that Electronic Complex Orders accepted in the Exchange's Complex Matching Engine (''CME'') [5] are executed automatically against other Electronic Complex Orders in the Consolidated Book,[6] unless individual orders or quotes in the Consolidated Book can execute against incoming Electronic Complex Orders, subject to specified conditions, in which case such individual orders and quotes have priority. Rule 6.91(a)(2)(ii) currently provides that Electronic Complex Orders in the CME that are not marketable against other Electronic Complex Orders automatically execute against individual quotes or orders in the Consolidated Book, provided that the Electronic Complex Orders can be executed in full or in a permissible ratio by the individual quotes or orders.

Rule 6.91(a)(2)(iv) currently provides that OTPs have the ability to view the Electronic Complex Orders in the Consolidated Book via an electronic interface and may submit orders to the CME to trade against orders in the Consolidated Book.[7] Current Rule 6.91 does not impose any cap on the volume of Electronic Complex Orders entered by OTPs.

The Exchange ranks and tracks Electronic Complex Orders in the Consolidated Book in a ''complex order table.'' The complex order table has sufficient capacity (i.e., the maximum allowable Electronic Complex Orders during the trading day) to accept all Complex Orders submitted by all OTPs under normal operating conditions. However, that capacity is not unlimited.[8] Thus, if an OTP were to experience a systems malfunction that led to the entry of an inordinate number of Electronic Complex Orders, the entire capacity of the complex order table could potentially be utilized solely by that one OTP. If this were to happen, the Exchange would have to reject all subsequent Electronic Complex Orders—from all OTPs—exceeding the total capacity of the complex order table on that trading day. Under current Rule 6.91, there is no limitation to the number of Electronic Complex Orders that a single OTP may submit, which, as explained above, could result in a single OTP utilizing the entire capacity of the complex order table. Thus, the Exchange is proposing to adopt as Commentary .03 to Rule 6.91 a cap to prevent an OTP from utilizing more than a specified percentage of the complex order table during the trading day (the ''Complex Order Table Cap'' or ''Cap'').

Pursuant to proposed Commentary .03 to Rule 6.91, if an OTP exceeds the Complex Order Table Cap by submitting orders that comprise more than ''n%'' of the capacity of the complex order table, the Exchange would reject that OTP's Electronic Complex Orders for the remainder of the trading day. Prior to breaching the Complex Order Table Cap, the OTP would receive a warning to signal a potential breach. Specifically, when an OTP utilizes more than ''n% − x'' of the complex order table, the OTP's Electronic Complex Orders would be rejected until such time that the OTP has notified the Exchange to re-enable the submission of Electronic Complex Orders. If, however, the Complex Order Table Cap is breached (i.e., the OTP submits orders in excess of ''n%'' of the complex order table), all Electronic Complex Orders submitted by that OTP would be rejected for the remainder of the trading day. The Exchange would not reject any Electronic Complex Orders until after an OTP had breached either the warning threshold (i.e., ''n% − x'') or the Cap. Thus, for example, if an OTP submits an Electronic Complex Order that, once accepted, breaches the Cap, the Exchange would accept that order in its entirety and then would reject all subsequent Electronic Complex Orders from that OTP for the remainder of the trading day. Unless determined otherwise by the Exchange and announced to OTPs via Trader Update, the specified percentage (i.e., ''n% [sic]) would be no less than 60%, and ''n% − x'' would be no less than 40%.[9]

While the Exchange does not currently anticipate having to adjust the proposed Cap, the Exchange recognizes that under certain market conditions (e.g., extreme volatility) or in unforeseen circumstances (e.g., unusual influx of market participants) the specified percentages prescribed by the Exchange may be overly restrictive at times and there could be situations where the Exchange may need to temporarily reduce the percentages applicable to the Cap to accommodate these situations. Thus, the Exchange proposes that in the interest of a fair and orderly market, the applicable percentages may be temporarily modified by a Trading Official to a percentage lower than prescribed. The Trading Officials are presently authorized to make similar determinations regarding such matters as position limits [10] and quote-width differentials.[11] Permitting a Trading Official to temporarily modify the percentages applicable to the Cap is consistent with their ability to recommend and enforce rules and regulations relating to trading, access, order, decorum, health, safety and welfare on the Exchange which contributes to the Exchange's obligation to maintain a fair and orderly market. If a Trading Official were to temporarily modify the percentages applicable to the Cap, the Exchange would contemporaneously announce the new settings to all OTPs via Trader Update. Temporary modifications to the percentages applicable to the Cap would be completed at the Exchange level. OTPs will not have to make any adjustments to proprietary systems to accommodate such modifications.

At present, the Exchange estimates that, on average, during the trading day, the volume of orders populating the complex order table from all OTPs combined is less than 40%. Because under normal operating conditions all OTPs combined utilize less than 40% of the complex order table, the Exchange believes that setting the Cap for a single OTP at 60% would ensure that 40% of the complex order table—which is typically sufficient to accommodate all OTP's orders—would remain accessible to the balance of OTPs and would not unfairly deny these OTPs access to the market. Moreover, the Exchange believes that a single OTP would only exceed the Cap (or receive a warning of a near breach) in the event of a bona fide problem (e.g., a system error or malfeasance).

The Exchange believes that the Complex Order Table Cap would improve the efficiency of the Electronic Complex Order process and help maintain a fair and orderly market because it is designed as a system protection tool that will enable the

[5] NYSE Arca Options Rule 6.91(a) defines the CME as ''the mechanism in which Electronic Complex Orders are executed against each other or against individual quotes and orders in the Consolidated Book.''

[6] NYSE Arca Options Rule 6.1(b)(37) defines the Consolidated Book as ''the Exchange's electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. All orders and Quotes with Size that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 6.76. There is no limit to the size of orders or quotes that may be entered into the Consolidated Book.''

[7] Under Rules 6.91(a)(2)(i), (a)(2)(ii) and (a)(2)(iv), incoming orders or quotes, or those residing in the Consolidated Book, that execute against Electronic Complex Orders are allocated pursuant to Rule 6.76A.

[8] The complex order table currently has the capacity to hold Electronic Complex Orders containing up to 14 million legs throughout the trading day.

[9] Trader Updates are disseminated electronically to all OTP Holders and OTP Firms.

[10] *See* Exchange Rule 6.8.04.

[11] *See* Exchange Rule 6.37.

Exchange to prevent any single OTP from utilizing more than a specified percentage of the complex order table during the trading day.

Implementation

The Exchange will announce the implementation date of the proposed rule change by Trader Update to be published no later than 60 days following approval. The implementation date will be no later than 60 days following the issuance of the Trader Update.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that providing the Complex Order Table Cap removes impediments to, and perfects the mechanism of a free and open market because it would provide the Exchange with a system protection tool designed to assist in addressing the risk that a single OTP could—either intentionally or inadvertently and erroneously—utilize the entire complex order table, effectively shutting out from the market for the remainder of the trading day all other OTPs' Electronic Complex Orders. By rejecting an OTP's Electronic Complex Orders when that OTP's orders encroach upon or exceed the Cap, the Exchange would ensure that the complex order table could fairly accommodate Electronic Complex Orders from all OTPs. The Cap would provide the ancillary benefit of reducing the risk that options orders submitted in error or otherwise by a single OTP could clog the complex order table, potentially foreclosing the execution of valid orders. Thus, the Exchange believes that the Complex Order Table Cap would protect investors and the public interests because the Cap would ensure the optimal functioning of the complex order table by disabling the submission of Electronic Complex Orders of a single OTP that has exceeded the Cap, thereby allowing the Exchange to accommodate Electronic Complex Orders from all other OTPs.

In addition, the Exchange believes that the implementation of the Cap would not unfairly deny any OTP access to the market. Under normal operating conditions, the Electronic Complex Orders of all OTPs combined does not exceed 40% of the complex order table. Therefore, the Exchange believes that setting the Cap for a single OTP at 60% would ensure that 40% of the complex order table—which is typically sufficient to accommodate all OTP's orders—would remain accessible to the balance of OTPs and would not unfairly deny these OTPs access to the market. Moreover, the Exchange believes that a single OTP would only exceed the Cap (or receive a warning of a near breach) in the event of a bono [sic] fide problem (e.g., a system error or malfeasance).

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. The Exchange believes the proposal will provide market participants with additional protection from erroneous executions. Thus, the Exchange does not believe the proposal creates any significant impact on competition.

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

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–NYSEArca–2013–115 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–NYSEArca–2013–115. 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 official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–115, and should be submitted on or before December 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27041 Filed 11–12–13; 8:45 am]

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[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70824; File No. SR–NYSEArca–2013–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Establish a Retail Liquidity Program

November 6, 2013.

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 October 22, 2012, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to [sic] a one-year pilot program that would add new Rule 7.44 to establish a Retail Liquidity Program (''Program'' or ''proposed rule change'') to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, while also providing the potential for price improvement to such order flow. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing a one-year pilot program that would add new NYSE Arca Equities Rule 7.44 to establish a Retail Liquidity Program to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, while also providing the potential for price improvement to such order flow.

Under the proposed rule change, the Exchange would create two new classes of market participants: (1) Retail Member Organizations (''RMOs''), which would be eligible to submit certain retail order flow (''Retail Orders'') to the Exchange, and (2) Retail Liquidity Providers (''RLPs''), which would be required to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the best protected bid or the best protected offer (''PBBO'') [4] (''Retail Price Improvement Order'' or ''RPI'') for securities to which they are assigned.[5] Equity Trading Permit (''ETP'') Holders would also be permitted, but not required, to submit RPIs.

The Exchange would submit a separate proposal to amend its Price List in connection with the proposed Retail Liquidity Program. Under that proposal, the Exchange expects to charge RLPs and other ETP Holders a fee for executions of their RPIs against Retail Orders and in turn would provide a credit or free executions to RMOs for executions of their Retail Orders against RPIs of RLPs and other ETP Holders. The fees and credits for liquidity providers and RMOs would be determined based on experience with the Program in the first several months.

Definitions

The Exchange proposes to adopt the following definitions under proposed NYSE Arca Equities Rule 7.44(a). First, the term ''Retail Liquidity Provider'' would be defined as an ETP Holder that was approved by the Exchange to act as such and to submit RPIs according to certain requirements set forth in proposed Rule 7.44.

Second, the term ''Retail Member Organization'' would be defined as an ETP Holder that has been approved by the Exchange to submit Retail Orders.

Third, the term ''Retail Order'' would be defined as an agency order or a riskless principal order that met the criteria of FINRA Rule 5320.03 that originated from a natural person and was submitted to the Exchange by an RMO, provided that no change was made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. Retail Orders must be priced in one cent increments in prices above $1.00 per share. In addition to interacting with RPIs, Retail Orders would interact with non-displayed liquidity priced better than the PBBO on the opposite [sic] of the Retail Order, excluding contra-side Retail Orders, in Exchange Systems, such as Passive Liquidity (''PL'') Orders and Mid-Point Passive Liquidity (''MPL'') Orders, would interact with displayable odd lot interest priced within the PBBO, and, depending upon how they are designated by an RMO, could interact with other interest in Exchange systems.

Finally, the term ''Retail Price Improvement Order'' would be defined as non-displayed interest in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that was better than the best protected bid (''PBB'') or best protected offer (''PBO'') by at least $0.001 and that was identified as an RPI in a manner prescribed by the Exchange.[6] The price

[4] The terms protected bid and protected offer would have the same meaning as defined in Regulation NMS Rule 600(b)(57). The PBB is the best-priced protected bid and the PBO is the best-priced protected offer. Generally, the PBB and PBO and the national best bid (''NBB'') and national best offer (''NBO'') will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the PBB or PBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

[5] RLPs would be permitted to submit RPIs for securities to which it was [sic] not assigned. For non-assigned securities, an RLP would be treated the same as other non-RLP ETP Holders.

[6] Exchange systems would prevent Retail Orders from interacting with an RPI if the RPI was not priced at least $0.001 better than the PBBO. The Exchange notes, however, that price improvement of $0.001 would be a minimum requirement and RLPs and other ETP Holders could enter Retail Price Improvement Orders that better the PBBO by more than $0.001. Concurrently with this filing, the Exchange has submitted a request for an exemption under Regulation NMS Rule 612 that would permit it to accept and rank the undisplayed RPIs. As outlined in the request, the Exchange believes that the minimum price improvement available under the Program, which would amount to $0.50 on a 500 share order, would be meaningful to the small retail investor. *See* Letter from Janet M. McGinness, Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission dated October

of an RPI would be determined by an ETP Holder's entry of RPI buy or sell interest into Exchange systems. RPIs would remain undisplayed. An RPI that was not priced within the PBBO would be rejected upon entry. A previously entered RPI that became priced at or inferior to the PBBO would not be eligible to interact with incoming Retail Orders, and such an RPI would cancel if a Retail Order executed against all displayed interest ranked ahead of the RPI and then attempted to execute against the RPI. If not cancelled, an RPI that was no longer priced at or inferior to the PBBO would again be eligible to interact with incoming Retail Orders. An RPI must be designated as either a PL or MPL Order, and an order so designated would interact with only Retail Orders.

RLPs and other liquidity providers [7] and RMOs could enter odd lots, round lots or mixed lots as RPIs and as Retail Orders, respectively. As discussed below, RPIs would be ranked and allocated according to price and time of entry into Exchange systems and therefore without regard to whether the size entered was an odd lot, round lot or mixed lot. Similarly, Retail Orders would interact with RPIs according to the priority and allocation rules of the Program and without regard to whether they were odd lots, round lots or mixed lots. Finally, Retail Orders could be designated as Type 1 or Type 2 without regard to the size of the lot. In accordance with CTA rules, executions less than a round lot would not print to the tape or be considered the last sale.

RPIs would interact with Retail Orders as follows; a more detailed priority and order allocation discussion is below. An RPI would interact with Retail Orders at the level at which the RPI was priced as long as the minimum required price improvement was produced. Accordingly, if RPI sell interest was entered with a $10.098 offer while the PBO was $10.11, the RPI could interact with the Retail Order at $10.098, producing $0.012 of price improvement.

RMO Qualifications and Approval Process

Under proposed NYSE Arca Equities Rule 7.44(b), any ETP Holder [8] could qualify as an RMO if it conducted a retail business or handled retail orders on behalf of another broker-dealer. Any ETP Holder that wished to obtain RMO status would be required to submit: (1) An application form; (2) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted by the ETP Holder as Retail Orders would meet the qualifications for such orders under proposed Rule 7.44; and (3) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.[9]

An RMO would be required to have written policies and procedures reasonably designed to assure that it would only designate orders as Retail Orders if all requirements of a Retail Order were met. Such written policies and procedures must require the ETP Holder to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represented Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it received from such broker-dealer customer that it designated as Retail Orders would meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders would be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.[10]

If the Exchange disapproved the application, the Exchange would provide a written notice to the ETP Holder. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 7.44(i), and/or reapply for RMO status 90 days after the disapproval notice was issued by the Exchange. An RMO also could voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Any ETP Holder that has qualified as an RMO pursuant to NYSE or NYSE MKT Rule 107C shall be deemed to be so qualified pursuant to this Rule.

RLP Qualifications

To qualify as an RLP under proposed NYSE Arca Equities Rule 7.44(c), an ETP Holder would be required to: (1) Already be registered as an MM or LMM; (2) demonstrate an ability to meet the requirements of an RLP; (3) have the ability to accommodate Exchange-supplied designations that identify to the Exchange RLP trading activity in assigned RLP securities; and (4) have adequate trading infrastructure and technology to support electronic trading.

Because an RLP would only be permitted to trade electronically, an ETP Holder's technology must be fully automated to accommodate the Exchange's trading and reporting systems that are relevant to operating as an RLP. If an ETP Holder was unable to support the relevant electronic trading and reporting systems of the Exchange for RLP trading activity, it would not qualify as an RLP. An RLP may not use the Exchange supplied designations for non-RLP trading activity at the Exchange. Additionally, an ETP Holder will not receive credit for its RLP trading activity for which it does not use its designation.

RLP Approval Process

Under proposed Rule 7.44(d), to become an RLP, an ETP Holder would be required to submit an RLP application form with all supporting documentation to the Exchange. The Exchange would determine whether an applicant was qualified to become an RLP as set forth above. After an applicant submitted an RLP application to the Exchange with supporting documentation, the Exchange would notify the applicant ETP Holder of its decision. The Exchange could approve one or more ETP Holders to act as an RLP for a particular security. The Exchange could also approve a particular ETP Holder to act as an RLP for one or more securities. Approved RLPs would be assigned securities according to requests made to, and approved by, the Exchange.

22, 2013 (''Sub-Penny Rule Exemption Request''). The Exchange is also planning to submit a request for no-action relief from Rule 602 of Regulation NMS.

[7] A Market Maker (''MM'') or Lead Market Maker (''LMM'') would be permitted to enter RPIs for securities in which they were not registered as an MM or LMM; however, the MM or LMM would not be eligible for execution fees that are lower than non-RLP rates for such securities.

[8] An RLP could also act as an RMO for securities to which it was not assigned, subject to the qualification and approval process established by the proposed rule.

[9] For example, a prospective RMO could be required to provide sample marketing literature, Web site screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange could require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

[10] FINRA, on behalf of the Exchange, would review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls.

If an applicant was approved by the Exchange to act as an RLP, the applicant would be required to establish connectivity with relevant Exchange systems before the applicant would be permitted to trade as an RLP on the Exchange.

If the Exchange disapproves the application, the Exchange would provide a written notice to the ETP Holder. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 7.44(i) and/or reapply for RLP status 90 days after the disapproval notice was issued by the Exchange.

Voluntary Withdrawal of RLP Status

An RLP would be permitted to withdraw its status as an RLP by giving notice to the Exchange under proposed NYSE Arca Equities Rule 7.44(e). The withdrawal would become effective when those securities assigned to the withdrawing RLP were reassigned to another RLP. After the Exchange received the notice of withdrawal from the withdrawing RLP, the Exchange would reassign such securities as soon as practicable, but no later than 30 days after the date the notice was received by the Exchange. If the reassignment of securities took longer than the 30-day period, the withdrawing RLP would have no further obligations and would not be held responsible for any matters concerning its previously assigned RLP securities.

RLP Requirements

Under proposed NYSE Arca Equities Rule 7.44(f), an RLP would only be permitted to enter RPIs electronically and directly into Exchange systems and facilities designated for this purpose and could only submit RPIs in their role as an RLP for the securities to which it is assigned as RLP.[11] In order to be eligible for execution fees that are lower than non-RLP rates, an RLP would be required to maintain (1) an RPI that was better than the PBB at least five percent of the trading day for each assigned security; and (2) an RPI that was better than the PBO at least five percent of the trading day for each assigned security.

An RLP's five-percent requirements would be calculated by determining the average percentage of time the RLP maintained an RPI in each of its RLP securities during the regular trading day, on a daily and monthly basis. The Exchange would determine whether an RLP met this requirement by calculating the following:

(1) The ''Daily Bid Percentage'' would be calculated by determining the percentage of time an RLP maintained an RPI with respect to the PBB during each trading day for a calendar month;

(2) The ''Daily Offer Percentage'' would be calculated by determining the percentage of time an RLP maintained an RPI with respect to the PBO during each trading day for a calendar month;

(3) The ''Monthly Average Bid Percentage'' would be calculated for each RLP security by summing the security's ''Daily Bid Percentages'' for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month; and

(4) The ''Monthly Average Offer Percentage'' would be calculated for each RLP security by summing the security's ''Daily Offer Percentage'' for each trading day in a calendar month and then dividing the resulting sum by the total number of trading days in such calendar month.

Finally, only RPIs would be used when calculating whether an RLP was in compliance with its five-percent requirements.

The Exchange would determine whether an RLP met its five-percent requirement by determining the average percentage of time an RLP maintained an RPI in each of its RLP securities during the regular trading day on a daily and monthly basis. The lower fees would not apply during a month in which the RLP had not satisfied the five-percent requirements. Additionally, beginning with the third month of operation as an RLP, an RLP's failure to satisfy the five-percent requirements described above for each of its assigned securities could result in action taken by the Exchange, as described below.

The Exchange would not begin calculating whether an RLP met the quoting requirement during the first two calendar months that the RLP participated in the Program. If the Program was implemented mid-month, the Exchange would begin calculating the quoting requirement two calendar months after the end of the month in which the program was implemented.

Failure of RLP To Meet Requirements

Proposed NYSE Arca Equities Rule 7.44(g) addresses an RLP's failure to meet its requirements. If, after the first two months an RLP acted as an RLP, an RLP failed to meet any of the requirements of proposed Rule 7.44(f) for any assigned RLP security for three consecutive months, the Exchange could, in its discretion, take one or more of the following actions[12]: (1) Revoke the assignment of any or all of the affected securities from the RLP; (2) revoke the assignment of unaffected securities from the RLP; or (3) disqualify the ETP Holder from its status as an RLP.

The Exchange, in its sole discretion, would determine if and when an ETP Holder was disqualified from its status as an RLP. One calendar month prior to any such determination, the Exchange would notify an RLP of such impending disqualification in writing. When disqualification determinations were made, the Exchange would provide a written disqualification notice to the ETP Holder.

A disqualified RLP could appeal the disqualification as provided in proposed Rule 7.44(i) and/or reapply for RLP status 90 days after the disqualification notice was issued by the Exchange.[13]

Failure of RMO To Abide by Retail Order Requirements

Proposed NYSE Arca Equities Rule 7.44(h) addresses an RMO's failure to abide by Retail Order requirements. If an RMO designated orders submitted to the Exchange as Retail Orders and the Exchange determined, in its sole discretion, that those orders failed to meet the requirements of Retail Orders, the Exchange could disqualify an ETP Holder from its status as an RMO. When disqualification determinations were made, the Exchange would provide a written disqualification notice to the ETP Holder. A disqualified RMO could appeal the disqualification as provided in proposed Rule 7.44(i) and/or reapply for RMO status 90 days after the disqualification notice was issued by the Exchange.[14]

Appeal of Disapproval or Disqualification

Proposed NYSE Arca Equities Rule 7.44(i) provides appeal rights to ETP Holders. If an ETP Holder disputed the Exchange's decision to disapprove it under Rule 7.44(b) or (d) or disqualify it under Rule 7.44(g) or (h), such ETP Holder (''appellant'') could request, within five business days after notice of the decision was issued by the Exchange, that the Retail Liquidity

[11] An ETP Holder acting as an RLP for a security could enter RPIs into Exchange systems and facilities for securities to which it was not assigned; however, the ETP Holder would not be eligible for execution fees that are lower than non-RLP rates for securities to which it was not assigned.

[12] As discussed previously, an RLP's failure to satisfy its requirement would result in the RLP no longer being charged the lower fees for execution of its Retail Price Improvement Orders.

[13] The Exchange notes that the RPI executions of an ETP Holder disqualified from acting as an RLP would thereafter be subject to the transaction pricing applicable to non-RLP ETP Holders.

[14] As above for RLPs, the Retail Order executions of an ETP Holder disqualified from RMO status would thereafter be subject to the transaction pricing applicable to non-RMO ETP Holders.

Program Panel (''RLP Panel'') review the decision to determine if it was correct.[15]

The RLP Panel would consist of the NYSE's Chief Regulatory Officer (''CRO''), or a designee of the CRO, and two officers of the Exchange designated by the Co-Head of U.S. Listings and Cash Execution. The RLP Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The RLP Panel could overturn or modify an action taken by the Exchange and all determinations by the RLP Panel would constitute final action by the Exchange on the matter at issue.

Retail Liquidity Identifier

Under proposed NYSE Arca Equities Rule 7.44(j), the Exchange would disseminate an identifier through the Consolidated Quotation System (''CQS''), the UTP Quote Data Feed, and the Exchange's proprietary data feed when RPI interest priced at least $0.001 better than the PBB or PBO for a particular security was available in Exchange systems (''Retail Liquidity Identifier''). The Retail Liquidity Identifier would reflect the symbol and the side (buy or sell) of the RPI interest, but would not include the price or size of the RPI interest. In particular, CQS, UTP Quote Data Feed, and proprietary data feed outputs would be modified to include a field for codes related to the Retail Liquidity Identifier. The codes would indicate RPI interest that was priced better than the PBBO by at least the minimum level of price improvement as required by the Program.

Retail Order Designations

Under proposed NYSE Arca Equities Rule 7.44(k), an RMO could designate how a Retail Order would interact with available contra-side interest as follows.

As proposed, a Type 1-designated Retail Order would be a limit order that would interact only with available contra-side RPIs and other non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order, excluding contra-side Retail Orders,[16] but would not interact with other available contra-side interest in Exchange systems or route to other markets. The portion of a Type 1-designated Retail Order that would not execute against contra-side RPIs or other price-improving liquidity would be immediately and automatically cancelled.

A Type 2-designated Retail Order could be marked as Immediate or Cancel (''IOC''), Day, or Market. A Type 2-designated Retail Order marked as IOC would be a limit order that would interact first with available contra-side RPIs and other non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order, excluding contra-side Retail Orders, and then any remaining portion of the Retail Order would be executed as a limit order marked as an IOC, pursuant to Rule 7.31(e)(2). A Type 2-designated Retail Order marked as IOC would not trade through Protected Quotations and would not route. A Type 2-designated Retail Order marked as Day would be a limit order that would interact first with available contra-side RPIs and other non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order, excluding contra-side Retail Orders, and then any remaining portion of the Retail Order would interact with the Arca Book and would route to Protected Quotations. Any unfilled balance of such an order would post to the Arca Book. A Type 2-designated Retail Order marked as Market would interact first with available contra-side RPIs and other non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order, excluding contra-side Retail Orders, and then any remaining portion of the Retail Order would be executed as a Market Order.[17]

A Retail Order designated with a ''No Midpoint Execution'' modifier, pursuant to Rule 7.31(h)(5), would not execute against resting MPL Orders but would execute against eligible RPIs that are also designated as MPL Orders.

Priority and Order Allocation

Under proposed NYSE Arca Equities Rule 7.44(l), the Exchange proposes that competing RPIs in the same security would be ranked and allocated together with all other non-displayed interest according to price then time of entry into Exchange systems. Any displayable odd lot interest priced between the PBBO would be ranked ahead of any RPIs and other non-displayed interest at any given price point. The Exchange further proposes that executions would occur in price/time priority in accordance with NYSE Arca Equities Rule 7.36. Any remaining unexecuted RPI interest would remain available to interact with other incoming Retail Orders if such interest was at an eligible price. Any remaining unexecuted portion of the Retail Order would cancel, execute, or post to the NYSE Arca Book in accordance with proposed Rule 7.44(k). The following examples illustrate this proposed method:

PBBO for security ABC is $10.00–$10.05
RLP 1 enters a Retail Price Improvement Order to buy ABC at $10.01 for 500
RLP 2 then enters a Retail Price Improvement Order to buy ABC at $10.02 for 500
RLP 3 then enters a Retail Price Improvement Order to buy ABC at $10.03 for 500

An incoming Type 1-designed Retail Order to sell ABC for 1,000 would execute first against RLP 3's bid for 500 at $10.03, because it was the best priced bid, then against RLP 2's bid for 500 at $10.02, because it was the next best priced bid. RLP 1 would not be filled because the entire size of the Retail Order to sell 1,000 would be depleted. The Retail Order would execute against RPI Orders in price/time priority, and *would not* execute at the single clearing price that completes the order's execution.

However, assume the same facts above, except that RLP 2's RPI to buy ABC at $10.02 was for 100. The incoming Retail Order to sell 1,000 would execute first against RLP 3's bid for 500 at $10.03, because it was the best priced bid, then against RLP 2's bid for 100 at $10.02, because it was the next best priced bid. RLP 1 would then receive an execution for 400 of its bid for 500 at $10.01, at which point the entire size of the Retail Order to sell 1,000 would be depleted.

Assume the same facts as above, except that RLP 3's order was not an RPI to buy ABC at $10.03, but rather, a non-displayed order to buy ABC at $10.03. The result would be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 would execute first against RLP 3's non-displayed bid for 500 at $10.03, because it was the best priced bid, then against RLP 2's bid for 100 at $10.02, because it was the next best priced bid. RLP 1 then receives an execution for 400 of its bid for 500 at $10.01, at which point the entire size of

[15] In the event an ETP Holder was disqualified from its status as an RLP pursuant to proposed Rule 7.44(g), the Exchange would not reassign the appellant's securities to a different RLP until the RLP Panel informed the appellant of its ruling.

[16] PL Orders, MPL Orders, and all other non-displayed price improving liquidity would be available to interact with incoming Retail Orders. Non-displayed price improving liquidity and RPIs entered at the same price would be ranked according to time of entry. Furthermore, PL Orders and MPL Orders may be entered in conjunction with RPIs, and orders designated as such would be available to interact with only Retail Orders. Displayable odd lot interest would also be available to interact with incoming Retail Orders. Displayable odd lot interest would be ranked according to time of entry and would be ranked ahead of RPIs and non-displayed price improving liquidity entered at the same price.

[17] Retail Orders marked as Market would be subject to trading collars. *See* NYSE Arca Equities Rule 7.31(a).

the Retail Order to sell 1,000 would be depleted.

As a final example, assume the original facts, except that LMT 1 entered a displayable odd lot limit order to buy ABC at $10.02 for 60. The incoming Retail Order to sell for 1,000 would execute first against RLP 3's bid for 500 at $10.03, because it was the best priced bid, then against LMT 1's bid for 60 at $10.02, because it was the next best priced bid and displayable odd lot interest would have priority over equally priced RPIs and non-displayed interest. RLP 2 would then receive an execution for 440 of its bid for 500 at $10.02, at which point the entire size of the Retail Order to sell 1,000 would be depleted.

To demonstrate how the different types of Retail Orders would interact with available Exchange interest, assume the following facts:

PBBO for security DEF is $19.99–$20.01 (100 × 100)
LMT 1 enters a Limit Order to buy DEF at $20.00 for 100
RLP 1 then enters a Retail Price Improvement Order to buy DEF at $20.003 for 100
MPL 1 then enters a Midpoint Passive Liquidity Order to buy DEF at $21.00 for 100

An incoming Type 2-designated IOC Retail Order to sell DEF for 300 at $20.00 would execute first against MPL 1's bid for 100 at $20.005, because it was the best priced bid, then against RLP 1's bid for 100 at $20.003, because it was the next best priced bid, and then against LMT 1's bid for 100 at $20.00 because it was the next best priced bid, at which point the entire size of the Retail Order to sell 300 would be depleted.

Assume the same facts as above except the incoming order was a Type 2-designated Day Retail Order to sell DEF for 500 at $20.00. The Retail Order would execute first against MPL 1's bid for 100 at $20.005, because it was the best priced bid, then against RLP 1's bid for 100 at $20.003, because it was the next best priced bid, and then against LMT 1's bid for 100 at $20.00 because it was the next best priced bid. The remaining balance of the Retail Order would post to the NYSE Arca Book at $20.00, resulting in a PBBO of $19.99–$20.00 (100 × 200).

Assume the same facts as above except the incoming order was a Type 1-designated Retail Order to sell DEF for 300. The Retail Order would execute first against MPL 1's bid for 100 at $20.005, because it was the best priced bid, and then against RLP 1's bid for 100 at $20.003. The remaining balance of the Retail Order would be cancelled and not execute against LMT 1 because Type 1-designated Retail Orders would not interact with interest on the NYSE Arca Book other than non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order.

Finally, to demonstrate the priority of displayed interest over RPIs, assume the following facts:

PBBO for security GHI is $30.00–$30.05
RLP 1 enters a Retail Price Improvement Order to buy GHI at $30.02 for 100
LMT 1 then enters a Limit Order to buy GHI at $30.02 for 100
New PBBO of $30.02–$30.05
RLP 2 then enters a Retail Price Improvement Order at $30.03 for 100

An incoming Type 2-designated IOC Retail Order to sell GHI for 300 at $30.01 would execute first against RLP 2's bid for 100 at $30.03, because it was the best priced bid, then against LMT 1 for 100 at $30.02 because it was the next best priced bid. The Retail Order would then attempt to execute against RLP 1, but because RLP 1 was priced at the PBBO and no longer price improving, RLP 1 would cancel. At that point, the remaining balance of the Retail Order would cancel because there were no remaining orders within its limit price.

Assume the same facts as above except the incoming Retail Order was for 200. The Retail Order would execute against RLP 2's bid for 100 at $30.03, because it was the best priced bid, then against LMT 1 for 100 at $30.02 because it was the next best priced bid. RLP 1 does not cancel because the incoming Retail Order was depleted before attempting to execute against RLP 1. RLP 1 would be eligible to interact with another incoming Retail Order because it would be priced better than the PBBO.

Implementation

The Exchange proposes that all NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, would be eligible for inclusion in the Retail Liquidity Program. In order to provide for an efficient implementation, the Retail Liquidity Program would initially cover only a certain specified list of NYSE Arca-listed securities to which RLPs would be assigned, as announced by the Exchange via Information Memo. The Exchange anticipates that the securities included within the Retail Liquidity Program would be expanded periodically as demand for RLP assignments developed in response to increased Retail Order activity on the Exchange.[18] The Retail Liquidity Program would be available for the Core Trading Session only. The Exchange would accept Retail Orders and RPIs only after the official opening price for the security had been disseminated.

The Exchange proposes to limit the Program during the pilot period to trades occurring at prices equal to or greater than $1.00 per share, and similarly, Retail Orders and RPIs could not be priced below $1.00. Toward that end, Exchange trade validation systems would prevent the interaction of RPI buy or sell interest and Retail Orders at a price below $1.00 per share and would reject Retail Orders and RPIs priced below $1.00. However, if the Retail Order was a Type 2-designated Market Retail Order,[19] it would be able to interact at prices below $1.00 with liquidity outside the Program in the Exchange's regular order book. In addition to facilitating an orderly[20] and operationally intuitive pilot, the Exchange believes that limiting the Program to trades equal to or greater $1.00 per share during the pilot would enable it better to focus its efforts to monitor price competition and to assess any indications that data disseminated under the Program was potentially disadvantaging retail orders. As part of that review, the Exchange would produce data throughout the pilot, which would include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.

The Exchange will announce via Trader Update the implementation date of the Program.

Comparison to Existing Programs

Proposed NYSE Arca Equities Rule 7.44 is based on NYSE Rule 107C, governing NYSE's ''Retail Liquidity Program'' which was recently approved by the Commission and commenced operations on August 1, 2012.[21]

[18] The Exchange would announce any such expansions via Information Memo.

[19] Type 2-designated Market Retail Orders would not be entered with a price and therefore would not implicate rules preventing the pricing of Retail Orders and RPIs below $1.00.

[20] Given the proposed limitation, the pilot Program would have no impact on the minimum pricing increment for orders priced less than $1.00 and therefore no effect on the potential of markets executing those orders to lock or cross. In addition, the undisplayed nature of the liquidity in the Program simply has no potential to disrupt displayed, protected quotes. In any event, the Program would do nothing to change the obligation of exchanges to avoid and reconcile locked and crossed markets under NMS Rule 610(d).

[21] Securities Exchange Act Release No. 67347 (July 3, 2012, 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84 (the ''RLP Approval Order''). In conjunction with the approval of the NYSE Retail Liquidity Program, a nearly identical program was proposed and approved to operate on NYSE MKT LLC. For ease of reference, the comparisons made in this section

Proposed Rule 7.44 is similar to NYSE Rule 107C with three key distinctions. The first distinction between proposed Rule 7.44 and NYSE Rule 107C is that the Exchange proposes to in all cases execute incoming Retail Orders against resting RPI Orders *and* other resting non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order to maximize the price improvement available to the incoming Retail Order. As proposed, the Exchange would maintain its price/time priority model and would provide all available price improvement to incoming Retail Orders, whether such price improvement is submitted pursuant to the Program or as an order type currently accepted by the Exchange.[22] In contrast, pursuant to NYSE Rule 107C(k)(1), a Type 1-designated Retail Order ''will interact only with available contra-side RPIs and will not interact with other available contra-side interest in Exchange systems.'' Accordingly, other non-displayed orders and displayable odd lot interest offering price improvement at prices better than resting RPI interest do not have an opportunity to interact with incoming Retail Orders pursuant to NYSE Rule 107C. The Exchange is proposing in all cases to provide the maximum price improvement available to incoming Retail Orders. Accordingly, Retail Orders under the Exchange's Program would always interact with available contra-side RPI Orders and any other non-displayed liquidity and displayable odd lot interest priced better than the PBBO on the opposite side of the Retail Order, in price/time priority consistent with the Exchange's Rule 7.36. Such other non-displayed price-improving contra-side liquidity would of course remain available to all participants, as it is today, while RPI Orders would only be available to RMOs, as described above.

Second, as proposed, the Exchange would provide applicable price improvement to incoming Retail Orders at potentially multiple price levels.[23] In contrast, pursuant to NYSE Rule 107C, an incoming Retail Order to NYSE will execute at the single clearing price level at which the incoming order will be fully executed. To illustrate, assume the same facts set forth in the second example above, where RLP 2's RPI Order to buy ABC at $10.02 was for 100 shares. Pursuant to NYSE Rule 107C, an incoming Retail Order to sell 1,000 shares would execute first against RLP 3's bid for 500 shares, because it is the best priced bid, then against RLP 2's bid for 100 shares, because it is the next best priced bid, then against 400 of the 500 shares bid by RLP 1. However, rather than executing at each of these price levels for the number of shares available, as it would under proposed NYSE Arca Equities Rule 7.44, the Retail Order submitted to NYSE pursuant to NYSE Rule 107C executes at the single clearing price that completes the order's execution, which is $10.01 to complete the entire order to sell 1,000 shares. The Exchange intends to provide all of the price improvement in these examples to the incoming Retail Order, and thus has proposed to execute orders under the Program consistent with its existing price/time market model.

Third, as proposed, RPIs would not be entered to track the PBBO, but instead would be entered at a single price.[24] In contrast, pursuant to NYSE Rule 107C, the price of an RPI is determined by an RLP's entry of the following into NYSE systems: (1) RPI buy or sell interest; (2) an offset, if any; and (3) a ceiling or floor price. The offset is a predetermined amount by which the RLP is willing to improve the PBBO, subject to a ceiling or floor price. The ceiling or floor price is the amount above or below which the RLP does not wish to trade. As such, pursuant to NYSE Rule 107C, an RPI typically tracks the PBBO. The Exchange would not offer the ability for RPIs to track the PBBO due to technological limitations and the complexity of offering such functionality. The Exchange further notes that because RPI interest will not peg to the PBBO, it will encourage ETP Holders to enter RPI interest that improves the price of the PBBO.

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),[26] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[27] The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market.

The Exchange understands that Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business.

While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would

only refer to NYSE Rule 107C, but apply equally to NYSE MKT Rule 107C—Equities.

[22] The Exchange notes that this functionality aligns with the functionality offered by BATS Y-Exchange, Inc. (''BYX'') for its Retail Price Improvement Program. *See* Securities Exchange Act Release No. 68303 (Nov. 27, 2012) (SR–BYX–2012–19). BYX's Program permits Retail Orders to interact with not only contra-side RPI Orders but also other contra-side price improving liquidity. *See* BYX Rules 11.24(f)(1) and (2).

[23] Again, the Exchange notes that this aspect of the Exchange's Program aligns with that of BYX's Program. BYX's Program executes Retail Orders and RPIs at multiple price levels rather than a single clearing price. *See* BYX Rule 11.24(g).

[24] The only exception is that MPL RPI orders would re-price with changes in the PBBO since an MPL RPI order is priced at the midpoint of the PBBO.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009); *see also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

result in better prices for retail investors. The Exchange recognizes that sub-penny trading and pricing could potentially result in undesirable market behavior. The Exchange would monitor the Program in an effort to identify and address any such behavior.

Finally, the Exchange proposes that the Commission approve the proposed rule for a pilot period of twelve months from the date of implementation, which shall occur no later than 90 days after Commission approval of Rule 7.44. The Program shall expire on [Date will be determined upon adoption of Rule 7.44]. The Exchange believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that was not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter. The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market.

Additionally, as previously stated, the differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors.

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

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–NYSEArca–2013–107 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–NYSEArca–2013–107. 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 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 publicly available. All submissions should refer to File Number SR–NYSEArca–2013–107 and should be submitted on or before December 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27053 Filed 11–12–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70820; File No. SR–NASDAQ–2013–136]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Penny Pilot Options Rebates and Fees

November 6, 2013.

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 October 28, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend certain Customer[3] and Professional[4]

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Customer'' applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of a broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)).

[4] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities,

Rebates to Add Liquidity in Penny Pilot Options [5] and NOM Market Maker [6] Fees for Removing Liquidity in Penny Pilot Options.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on November 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange proposes to amend Tier 8 of the Customer and Professional Penny Pilot Options Rebates to Add Liquidity. The Exchange also proposes to modify the NOM Market Maker Penny Pilot Options Fee for Removing as described in more detail below.

Today, the Exchange offers an eight-tiered Rebate to Add Liquidity in Penny Pilot Options to Customers and Professionals as follows:

Monthly volume	Rebate to add liquidity
Tier 1—Participant adds Customer and/or Professional liquidity of up to 0.20% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month	$0.25
Tier 2—Participant adds Customer and/or Professional liquidity of 0.21% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month	0.40
Tier 3—Participant adds Customer and/or Professional liquidity of 0.31% to 0.49% of total industry customer equity and ETF option ADV contracts per day in a month	0.43
Tier 4—Participant adds Customer and/or Professional liquidity of 0.5% or more of total industry customer equity and ETF option ADV contracts per day in a month	0.45
Tier 5—Participant adds (1) Customer and/or Professional liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant executed at least one order on NASDAQ's equity market	0.42
Tier 6—Participant has Total Volume of 115,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity	0.45
Tier 7—Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity	0.47
Tier 8—Participant (1) has Total Volume of 325,000 or more contracts per day in a month, or (2) Participant has Total Volume of 200,000 or more contracts per day in a month, of which 70,000 or more contracts per day in a month must be Customer and/or Professional liquidity or (3) adds Customer and/or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month.	0.48

The Exchange is proposing to amend Tier 8 which currently pays a rebate of $0.48 per contract to a Participant that: (i) Has Total Volume [7] of 325,000 or more contracts per day in a month; or (ii) Participant has Total Volume of 200,000 or more contracts per day in a month, of which 70,000 or more contracts per day in a month must be Customer and/or Professional liquidity or (iii) adds Customer and/or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month. The Exchange is proposing to continue to pay a $0.48 per contract rebate for Tier 8 and amend the rebate tier by eliminating the criteria of executing a Total Volume of 325,000 or more contracts per day in a month. Pursuant to the proposal, in order to

and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[5] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2013. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); and 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR–NASDAQ–2013–082). *See also* NOM Rules, Chapter VI, Section 5.

[6] The term ''NOM Market Maker'' means a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[7] Total Volume is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options or non-Penny Pilot Options which either adds or removes liquidity on NOM. *See* Chapter XV, Section 2(1) of the NOM Rules.

qualify for a Tier 8 Customer or Professional Rebate to Add Liquidity, a Participant would now be required to either execute (i) Total Volume of 200,000 or more contracts per day in a month, of which 70,000 or more contracts per day in a month must be Customer and/or Professional liquidity or (ii) Customer and/or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month. The Exchange believes that Participants will continue to be incentivized to achieve a Tier 8 rebate while directing additional Customer and/or Professional liquidity on NOM.

The Exchange also proposes to amend the NOM Market Maker Penny Pilot Fee for Removing Liquidity by increasing the fee from $0.47 to $0.48 per contract. The Exchange believes that despite the fee increase, that NOM Market Makers will continue to remove liquidity in Penny Pilot Options.

2. Statutory Basis

NASDAQ believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act [9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to amend the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is reasonable because the Exchange will continue to offer competitive Customer and Professional rebates in order to attract liquidity to the market to the benefit of all market participants. The Exchange believes that offering Customers and Professionals the opportunity to earn higher rebates based on certain volume requirements is reasonable because by incentivizing Participants to select the Exchange as a venue to post Customer and Professional liquidity will attract additional order flow to the benefit of all market participants. The amended Tier 8 criteria should incentivize Participants to add Customer and Professional liquidity to NOM. Participants would no longer be able to qualify by solely obtaining Total Volume which is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options or Non-Penny Pilot Options which either adds or removes liquidity on NOM; however, some portion of the liquidity could still be Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options or Non-Penny Pilot Options which either adds or removes liquidity.[10] The Exchange believes that it is reasonable to incentivize Participants to add a greater amount of Customer and/or Professional liquidity, combined with other volume, as a means to qualify for the Tier 8 rebate. This proposal only impacts one of the ways in which a Participant may qualify for the Tier 8 rebate. In addition, other exchanges employ similar incentive programs.[11]

The Exchange's proposal to amend the Tier 8 rebate by removing the ability to qualify for the tier by transacting Total Volume of 325,000 or more contracts per day in a month is equitable and not unfairly discriminatory because this amendment will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the Tier 8 rebate provided they transact a qualifying amount of Customer and Professional volume in Penny Pilot Options. Further, market participants may continue to apply some amount of Total Volume transactions toward qualifying for this rebate; however, the amount of eligible volume from certain types non-Customer, non-Professional volume would be limited to limited to 130,000 contracts.

This proposal does not widen a current pricing differential. The Exchange would continue to pay the highest Tier 1 Rebates to Add Liquidity in Penny Pilot Options of $0.25 per contract to Customers, Professionals and NOM Market Makers for transacting one qualifying contract as compared to other market participants.[12] The Exchange believes that Customers are entitled to higher rebates because Customer order flow brings unique benefits to the market through increased liquidity which benefits all market participants. The Exchange believes that continuing to offer Professionals the same Penny Pilot Options Rebates to Add Liquidity as Customers is equitable and not unfairly discriminatory for the reasons which follow. The Exchange believes that offering Professionals the opportunity to earn the same rebates as Customers, as is the case today, and higher rebates as compared to Firms, Broker-Dealers and Non-NOM Market Makers, and in some cases NOM Market Makers, is equitable and not unfairly discriminatory because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options. By offering Professionals, as well as Customers, higher rebates, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow. A Participant may not be able to gauge the exact rebate tier it would qualify for until the end of the month because Professional volume would be commingled with Customer volume in calculating tier volume.[13] A Professional could only otherwise presume the Tier 1 rebate would be achieved in a month when determining price.[14] Further, the Exchange initially established Professional pricing in order to ''. . . bring additional revenue to the Exchange.'' [15] The Exchange noted in the Professional Filing that it believes ''. . . that the increased revenue from

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4), (5).

[10] Tier 8 continues to permits Participants to add Total Volume of 200,000 or more contracts per day in a month so long as 70,000 or more contracts per day in a month consists of Customer and/or Professional liquidity.

[11] *See* CBOE Fees Schedule. CBOE offers each Trading Permit Holder (''TPH'') a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding RUT, mini-options, QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain percentage thresholds in a month as described in the Volume Incentive Program. *See also* Phlx's Pricing Schedule at Section B which contains the Customer Rebate Program.

[12] Firms, Non-NOM Market Makers and Broker-Dealers receive a $0.10 per contract Penny Pilot Option Rebate to Add Liquidity. In addition, a Participant that adds Firm, Non-NOM Market Maker or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 15,000 contracts per day or more in a given month will receive a Rebate to Add Liquidity in Penny Pilot Options of $0.20 per contract.

[13] Customer and Professional volume is aggregated for purposes of determining which rebate tier a Participant qualifies for with respect to the Professional Rebate to Add Liquidity in Penny Pilot Options.

[14] A Professional would be unable to determine the exact rebate that would be paid on a transaction by transaction basis with certainty until the end of a given month when all Customer and Professional volume is aggregated for purposes of determining which tier the Participant qualified for in a given month.

[15] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066) (''Professional Filing''). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

the proposal would assist the Exchange to recoup fixed costs.'' [16] The Exchange also noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a customer and market maker, accomplishes this objective.[17] The Exchange does not believe that providing Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers. Also, a Professional is assessed the same fees as other market participants, except Customers, as discussed herein.[18] For these reasons, the Exchange believes that continuing to offer Professionals the same rebates as Customers is equitable and not unfairly discriminatory. Also, NOM Market Makers would continue to be offered the opportunity to earn higher rebates as compared to Non-NOM Market Makers, Firms and Broker Dealers [19] because NOM Market Makers add value through continuous quoting [20] and the commitment of capital.

The Exchange's proposal to increase the NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options is reasonable because the fee is within the range of fees assessed to other market participants. The Exchange's proposal to increase the NOM Market Maker Fee for Removing Liquidity is equitable and not unfairly discriminatory because the Exchange would uniformly assess all market participants, except Customers, the same Fee for Removing Liquidity of $0.48 per contract. Customers order flow brings unique benefits to the market in terms of liquidity and therefore Customers are assessed lower fees. By assessing a NOM Market Maker the same fee as other market participants, except Customers, the Exchange is removing the pricing differential that exists today. Also, NOM Market Makers have the ability to earn higher rebates as compared to the $0.10 Rebate to Add Liquidity in Penny Pilot Options that is available to Firms, Non-NOM Market Makers and Broker-Dealers. This is because NOM Market Makers add value through continuous quoting [21] and the commitment of capital. Customers and Professionals also have the opportunity to earn tiered rebates for the reasons noted above.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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. Customers have traditionally been paid the highest rebates offered by options exchanges. While the Exchange's proposal results in a Professional receiving the same or a higher rebate as compared to a NOM Market Maker, in certain circumstances, the Exchange does not believe the proposed rebate tiers would result in any burden on competition as between market participants. By offering Professionals, as well as Customers, higher rebates, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow. The Exchange believes that offering Customers and Professionals the proposed tiered rebates creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Customer and Professional order flow. The amendment to the Tier 8 rebate will incentivize market participants to direct additional Customer and/or Professional liquidity to the Exchange to obtain the Tier 8 rebate. This liquidity will benefit other market participants.

The Exchange does not believe that increasing the NOM Market Maker Fee for Removing Liquidity creates a burden on competition. The increased NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options will align this fee for all non-Customers. Customers will continue to be assessed a lower Fee for Removing Liquidity in Penny Pilot Options because Customer order flow brings unique benefits to the market in terms of liquidity, which benefits other market participants.

The Exchange believes the differing outcomes, rebates and fees created by the Exchange's proposed pricing incentives contribute to the overall health of the market place for the benefit of all Participants that willing choose to transact options on NOM. For the reasons specified herein, the Exchange does not believe this proposal creates an undue burden on competition. The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[22] 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

[16] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066).

[17] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066). The Exchange noted in this filing that it believes the role of the retail customer in the marketplace is distinct from that of the professional and the Exchange's fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

[18] Pursuant to this proposal, the Fee for Removing Liquidity in Penny Pilot Options is $0.48 per contract for all market participants, except Customers, who are assessed a fee of $0.45 per contract.

[19] Firms, Non-NOM Market Makers and Broker-Dealers are paid a $0.10 per contract Rebate to Add Liquidity in Penny Pilot Options and have the opportunity to earn a higher Penny Pilot Options Rebate to Add Liquidity of $0.20 per contract if they transact 15,000 contract per day or more in a given month of Penny Pilot Options or Non-Penny Pilot Options liquidity.

[20] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[21] *Id.*

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

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–NASDAQ–2013–136 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–NASDAQ–2013–136. 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–NASDAQ–2013–136, and should be submitted on or before December 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27048 Filed 11–12–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70821; File No. SR–Phlx–2013–106]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Amend Rules 1064 and 1080 To More Specifically Address the Number and Size of Counterparties to a Qualified Contingent Cross Order

November 6, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 23, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Rules 1064 and 1080 to more specifically address the number and size of counterparties to a Qualified Contingent Cross Order (''QCC Order''). The text of the proposed rule change is below. Proposed new language is italicized; deleted text is in brackets.

* * * * *

Rule 1064. Crossing, Facilitation and Solicited Orders

(a)–(d) No change.

(e) A Floor Qualified Contingent Cross Order is comprised of an order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified contingent trade, as that term is defined in subsection (3) below, coupled with a contra-side order *or orders totaling* [to buy or sell] an equal number of contracts.

(1)–(3) No change.

Commentary

01–04 No change.

* * * * *

Rule 1080. Phlx XL and Phlx XL II

(a)–(n) No change.

(o) Qualified Contingent Cross Order.

A Qualified Contingent Cross Order is comprised of an order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified contingent trade, as that term is defined in subsection (3) below, coupled with a contra-side order *or orders totaling* [to buy or sell] an equal number of contracts.

(1)–(3) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to expand the availability of QCC orders by permitting multiple counterparties on a QCC order, including permitting one individual counterparty to consist of an order for less than 1,000 contracts provided one side of the QCC order meets the 1,000 contract minimum (as well as the other requirements of a QCC Order). This is intended to accommodate multiple counterparties, as explained further below.

The Exchange currently permits two types of QCC Orders. Pursuant to Rule 1064(e), A Floor Qualified Contingent Cross Order (''Floor QCC Order'') is comprised of an order to buy or sell at least 1,000 contracts [3] that is identified as being part of a qualified contingent trade,[4] coupled with a contra-side order

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[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the case of Mini Options, the minimum size is 10,000 contracts.

[4] A ''qualified contingent trade'' is a transaction consisting of two or more component orders,

to buy or sell an equal number of contracts. Floor QCC Orders are immediately executed upon entry into the System by an Options Floor Broker provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the National Best Bid/Offer (''NBBO''). Floor QCC Orders are submitted into the System by Floor Brokers on the Floor via the Floor Broker Management System. Floor QCC Orders are automatically rejected if they cannot be executed.

In addition to Floor QCC Orders, Phlx offers automated Qualified Contingent Orders (''Automated QCC Order''). Pursuant to Rule 1080(o), an Automated QCC Order is very similar to a Floor QCC Order, in that it must be comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side order to buy or sell an equal number of contracts. Automated QCC Orders shall only be submitted electronically from off the Floor to the Phlx System. Automated QCC Orders are immediately executed upon entry into the System by an Order Entry Firm provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the NBBO. Automated QCC Orders will be automatically rejected if they cannot be executed.

Some Exchange members have requested the ability to submit both Floor and Automated QCC Orders involving multiple counterparties on one side of the trade where the contracts submitted total at least 1,000 contracts. Accordingly, the Exchange is proposing to change the definition of both types of QCC Orders to accommodate multiple counterparties. Each definition of a QCC Order is currently framed in the singular (. . . coupled with *a* contra-side order . . .), therefore, the Exchange would like to make it clear to its members and other participants that a QCC Order must involve a single order for 1,000 contracts on one side, but that it may consist of multiple orders on the opposite side.

For instance, a 5,000 contract QCC Order to buy could, under this proposal, be coupled with two orders to sell 2,500 contracts each. Similarly, a 5,000 contract order to buy would, under this proposal, be coupled with an order to sell 4,500 contracts and an order to sell 500 contracts. Each sell order need not be for a minimum of 1,000 contracts, provided that the total of all sell orders equals the size of the buy order and is at least 1,000 contracts. Accordingly, the Exchange is proposing to amend the definition of QCC Order to permit a single order to buy or sell at least 1,000 contracts on one side coupled with an order or orders totaling an equal number of contracts.

The Exchange understands that the International Securities Exchange (''ISE'') permits multiple counterparties on one side of a QCC to fulfill the 1,000 contract minimum.[5] Although the ISE and Phlx rules governing QCC Orders are identically-worded in relevant respects, Phlx has taken the opposite approach and required that both sides of a QCC Order be a single order of at least 1,000 contracts.

While the current ISE and Phlx rule language may be ambiguous regarding the practice of permitting multiple counter-parties on one side of the QCC Order, there is support for the practice in prior Commission orders. In approving QCC orders on another exchange,[6] the Commission noted that:

> QCC Orders must be for 1,000 or more contracts, in addition to meeting all of the requirements of the NMS QCT Exemption. The Commission believes that those customers participating in QCC Orders will likely be sophisticated investors who should understand that, without a requirement of exposure for QCC Orders, their order would not be given an opportunity for price improvement on the Exchange. These customers should be able to assess whether the net prices they are receiving for their QCC Order are competitive, and who will have the ability to choose among broker-dealers if they believe the net price one broker-dealer provides is not competitive. Further, broker-dealers are subject to a duty of best execution for their customers' orders, and that duty does not change for QCC Orders.[7]

Accordingly, the 1,000 contract buy order, for example, reflects the buying interest of a sophisticated investor while the multiple sellers, as proposed, are accommodating that buying interest.

Phlx notes that this potential ambiguity extends back to the original QCC Approval Order and to ISE's comment letter in support of it. In its discussion about the 1,000 contract requirement, the ISE stated:

> . . . CBOE questions how we calculate the 1,000 contract minimum for the QCC. Nothing could be clearer in our proposed rule: proposed ISE Rule 715(j) defines QCC as 'an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade. . . .' This means what it says, that there must be an order to buy or sell 1,000 contracts that is part of a QCC—not two 500 orders, not two 500 legs, not anything but an order to buy or sell at least 1,000 contracts.[8]

Despite this seemingly clear statement requiring a single order of at least 1,000 contracts on each side of a QCC Order, ISE currently permits members to satisfy the 1,000-contract requirement through a combination of multiple orders.

Rather than operate with ambiguity, the Exchange is filing this proposal to make clear that only one side (either the buy or the sell and not both) must meet the minimum 1,000 contract size requirement.

The Exchange is not proposing to limit this proposal to a single participant type, such as a customer. Today, QCC Orders are not limited this way. Neither side must be on behalf of a customer. The original ISE proposal was not crafted to be limited either; there is little mention of the word ''customer.'' To the contrary, the QCC Approval Order specifically contemplated ''sophisticated investors'' in citing the benefits of qualified contingent trades,[9] rather than ''public customers'' or ''retail.'' The Exchange believes that QCC Orders are used by and needed for all types of market participants, and this proposal to permit multiple counterparties would similarly be useful for all types of market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11]

executed as agent or principal, where: (a) At least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

[5] *But see* CBOE RG13–041 at *http://cchwallstreet.com/CBOEtools/PlatformViewer.asp?SelectedNode=chp_1_1&manual=/CBOE/bulletins/cboe-reg-bull-2013/.*

[6] *See* Securities Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR–ISE–2010–73)(''QCC Approval Order'').

[7] QCC Approval Order at Section III.C.

[8] *See* letter from Michael J. Simon, Secretary, International Securities Exchange, to Elizabeth M. Murphy, Secretary, Commission, dated August 25, 2010 (Letter responding to CBOE comment on SR–ISE–2010–73).

[9] *See supra* note 7 and accompanying text.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by making the QCC Order more palatable to counterparties, thereby encouraging trading in multiple instruments. Specifically, because the proposal seeks to permit multiple counterparties, it should therefore provide more opportunity to participate in QCC trades, consistent with the key principles behind the QCC Order.

In approving QCC Orders, the Commission has stated that ''. . . qualified contingent trades are of benefit to the market as a whole and a contribution to the efficient functioning of the securities markets and the price discovery process.'' [12] The Commission ''also has recognized that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and *equity derivatives such as options* [emphasis added].'' [13] In light of these benefits, the Exchange believes that the proposal should improve the usefulness of the QCC Order without raising novel regulatory issues, because the proposal does not impact the fundamental aspects of this order type—it merely permits multiple counterparties on one side, while preserving the 1,000 contract minimum.

Consistent with Section 6(b)(8) of the Act, the Exchange seeks to compete with other options exchanges for QCC Orders involving multiple parties, including where one side of the order is for less than 1,000 contracts. The Exchange believes that this will be beneficial to participants because allowing multiple parties of any size on one side should foster competition for filling one side of a QCC Order and thereby result in potentially better prices.

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. In fact, the proposal is intended to relieve a burden on competition, which results from different exchanges interpreting their rules differently. Among the options exchanges, the Exchange believes that the proposal to allow multiple parties of any size on one side should foster competition for filling one side of a QCC order and thereby result in potentially better prices for such orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–Phlx–2013–106 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–Phlx–2013–106. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–106 and should be submitted on or before December 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27051 Filed 11–12–13; 8:45 am]

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[12] QCC Approval Order at text accompanying footnote 115.

[13] QCC Approval Order at Section III.A. citing Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Original QCT Exemption).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70822; File Nos. SR–NYSE–2013–54; SR–NYSEMKT–2013–66; SR–NYSEARCA–2013–77]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Approval to Proposed Rule Changes, as Modified by Amendment No. 1, That Address the Exchanges' Emergency Powers

November 6, 2013.

I. Introduction

On July 22, 2013, the New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE and NYSE MKT, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] proposed rule changes to address their emergency powers. The proposed rule changes were published for comment in the **Federal Register** on August 8, 2013.[3] The Commission received two comments on the proposals.[4] The Exchanges submitted a response to the comment letters on September 9, 2013.[5] On September 20, 2013, the Commission designated a longer period for action on the proposed rule changes, noting that the Exchanges had yet to conduct a planned industry-wide test of the changes contemplated by the proposals.[6] On October 29, 2013, as a result of the industry-wide test, the Exchanges submitted Amendment No. 1 to the proposals.[7] This order approves the proposed rule changes, as amended.[8]

II. Description of the Proposals

The Exchanges' proposals seek to establish clear and operationally feasible procedures that would govern the Exchanges' conduct during emergency conditions. NYSE currently sets forth its emergency powers in its Rule 49, which includes the power to designate NYSE Arca as its backup trading facility during an emergency. NYSE proposes to revise Rule 49 in several key ways to respond to operational capabilities and preferences expressed by its members and the industry. NYSE MKT, which currently has no rule setting forth its emergency powers, proposes to adopt the text of revised NYSE Rule 49 as NYSE MKT Rule 49—Equities, which would provide its officials with the same emergency powers that NYSE officials may exercise. NYSE Arca, which currently has in place NYSE Arca Equities Rule 2.100 to mirror and effect the operation of NYSE Rule 49, would revise Rule 2.100 to reflect the changes to NYSE Rule 49 and the adoption of NYSE MKT Rule 49—Equities. The Exchanges submitted the proposals in part in response to the aftermath of Superstorm Sandy, which struck the New York City area in October 2012, causing the NYSE and NYSE MKT to remain closed for two days and highlighting certain operational difficulties with current NYSE Rule 49.

NYSE's Current Emergency Powers Rule (Rule 49)

The NYSE's current Rule 49 was adopted in 2009 to provide the Exchange with the authority to declare an emergency condition[9] with respect to trading on or through the systems and facilities of the exchange and to act as necessary in the public interest and for the protection of investors.[10] The authority in Rule 49 may be exercised when: (i) There exists a regional or national emergency that would prevent the NYSE from operating normally; and (ii) such a declaration is necessary so that the securities markets in general, and the NYSE's systems and facilities, including the trading floor, in particular, may continue to operate in a manner consistent with the protection of investors and in pursuit of the public interest.[11] To date, the NYSE has never invoked the rule.

If such an emergency condition is declared, NYSE Rule 49 authorizes a ''qualified Exchange officer''[12] to designate NYSE Arca, the NYSE's affiliate, to serve as a backup facility to receive and process bids and offers and to execute orders on behalf of the NYSE so that the NYSE, as a self-regulatory organization (''SRO''), can remain operational. In essence, the NYSE would use NYSE Arca's system as the execution engine for NYSE trades.[13] During such an emergency condition, NYSE Arca also would continue to operate simultaneously in its own capacity. NYSE Arca Rule 2.100 provides NYSE Arca with the authority to effectuate the provisions of NYSE Rule 49.

Upon the declaration of an emergency, the NYSE would halt all trading conducted on its systems and facilities. Unexecuted orders would remain on the NYSE's systems unless cancelled. The NYSE would open trading on the systems and facilities of NYSE Arca as soon thereafter as possible, but not earlier than the next trading day. As soon as practicable following the commencement of trading on the systems and facilities of NYSE Arca, any unexecuted orders would be purged from the NYSE's own systems and facilities.[14]

Quotes or orders for NYSE-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be reported to the Consolidated Quotation System (''CQS'') as bids and offers, or to the Consolidated Tape Association (''CTA'') as executions, made on or through the systems and facilities of the NYSE, not NYSE Arca. This means that, for the

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 70099 (August 2, 2013), 78 FR 48522 (SR–NYSE–2013–54) (''NYSE Notice''); 70098 (August 2, 2013), 78 FR 48513 (SR–NYSEMKT–2013–66) (''NYSE MKT Notice''); and 70097 (August 2, 2013), 78 FR 48528 (SR–NYSEARCA–2013–77) (''NYSE Arca Notice'').

[4] *See* Letters to the Commission from Elizabeth King, Global Head of Regulatory Affairs, KCG Holdings, Inc., dated August 28, 2013 (''KCG Letter''), and Manisha Kimmel, Executive Director, Financial Information Forum (''FIF''), dated August 29, 2013 (''FIF Letter''). The Commission notes that the KCG Letter addresses only the NYSE proposal.

[5] *See* Letter to the Commission from Janet McGinnis, General Counsel, NYSE Markets, dated September 9, 2013 (''Exchanges' Response Letter'').

[6] *See* Securities Exchange Act Release No. 34–70463, 78 FR 59390 (September 26, 2013).

[7] In Amendment No. 1, NYSE modified its proposal to (1) change how certain trade and quote messages would be disseminated by NYSE Arca during an emergency and (2) clarify how the proposed rules would apply when a stock opened on a quote or if an issuer chose to proceed with an initial public offering during an emergency. NYSE MKT and NYSE Arca submitted conforming amendments. The Exchanges note that these amendments were submitted to incorporate feedback received in response to an industry-wide test they conducted on September 21, 2013. Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment. The Commission notes, however, that the Exchanges each submitted on October 30, 2013, a comment letter attaching Amendment No. 1 so that this amendment could be posted on the Commission's Web site.

[8] Because the NYSE MKT filing would simply copy and adopt the substance of revised NYSE Rule 49, and because the NYSE Arca filing simply conforms NYSE Arca's current emergency powers rule to incorporate the changes to NYSE Rule 49 and NYSE MKT Rule 49—Equities, the Commission is addressing the NYSE, NYSE MKT, and NYSE Arca proposals together in this Order.

[9] NYSE Rule 49(a)(3)(i) incorporates the same definition of ''emergency'' as that found in Section 12(k)(7) of the Act. Section 12(k)(7) defines an emergency to mean ''(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions.'' 15 U.S.C. 78l(k)(7).

[10] *See* Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR–NYSE–2009–105) (Order approving proposal to adopt Rule 49) (''NYSE Rule 49 Approval Order''). At the same time, NYSE Arca amended NYSE Arca Rule 2.100 to allow it to act as the designated alternative trading facility of NYSE in an emergency. *See* Securities Exchange Act Release No. 61178 (December 16, 2009), 74 FR 68434 (December 24, 2009).

[11] *See* NYSE Rule 49(a)(2). Rule 49(c)(1) provides further that the NYSE will make reasonable efforts to contact the Commission prior to taking action under Rule 49. The authority granted under NYSE Rule 49 may be operative for up to 10 calendar days from the date that the NYSE invokes such authority. Any longer exercise of such authority must be approved by the Commission. *See* NYSE Rule 49(c)(2).

[12] A ''qualified Exchange officer'' is the NYSE Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation, Inc. Chief Executive Officer or his or her designee. If these individuals are unable to act due to incapacitation, the most senior surviving officer of NYSE Euronext or NYSE Regulation, Inc. will be a ''qualified Exchange officer'' for purposes of NYSE Rule 49. *See* NYSE Rule 49(a)(3)(ii).

[13] *See* NYSE Rule 49 Approval Order, *supra* note 10, 74 FR at 68643.

[14] *See* NYSE Rule 49(b)(2)(i).

duration of the emergency condition, trades in NYSE-listed securities would print to the CTA with the NYSE's ''N'' symbol, and quotes would be designated as NYSE quotes in the CQS, notwithstanding that they were processed on or through the systems and facilities of NYSE Arca.[15]

NYSE members, member organizations, and Sponsored Participants Members would be permitted to enter quotes and to execute orders on or through the systems and facilities of NYSE Arca, regardless of whether these members, member organizations, or Sponsored Participants are members or sponsored participants of NYSE Arca at the time an emergency condition was declared.[16] Additionally, NYSE members and member organizations would be required to have contingency plans for changing the routing instructions for their order entry systems and to take such other appropriate actions as instructed by the Exchange to accommodate the use of the systems and facilities of NYSE Arca to trade NYSE-listed securities.[17] Furthermore, NYSE member organizations registered as Designated Market Makers (''DMMs'') would, if designated as a temporary member of NYSE Arca during an emergency condition, be considered a ''Market Maker'' under NYSE Arca Equities Rules.[18] As such, these member organizations would be subject to the quoting obligations that NYSE Arca imposes on its ''Market Makers'' in NYSE Arca Equities Rule 7.23.

All trades of NYSE-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be subject to the NYSE Arca Equities Rules governing trading, and these rules would be considered NYSE rules for the purposes of such transactions, except that (i) the NYSE's rules governing member firm conduct—including, but not limited to, membership requirements and net capital requirements—would continue to apply to its members, member organizations, and Sponsored Participants and (ii) the NYSE's listing requirements for its listed securities would continue to apply.[19]

Surveillance of trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca would be conducted by NYSE Arca on behalf of the NYSE. Members and member organizations of the NYSE would remain subject to the jurisdiction of the NYSE for any disciplinary actions related to the trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca. Violations of the rules of NYSE Arca would be referred to the NYSE for prosecution according to the NYSE's disciplinary rules. NYSE members and member organizations could not assert as an affirmative defense to prosecution the lack of jurisdiction of the NYSE over trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca.[20]

NYSE's Proposed Revisions to Rule 49

As a result of Superstorm Sandy, which caused NYSE and NYSE MKT to close for two days on October 29 and 30, 2012, the industry identified certain difficulties with the operation of NYSE's current Rule 49. Accordingly, NYSE has proposed to revise the Rule to more effectively delineate the SRO functions of the NYSE and NYSE Arca during an emergency condition, to reflect the operational capabilities and preferences of the industry, and to reflect the current structure of member-organization connectivity to and system coding for exchange systems.

The NYSE proposes to amend Rule 49(a)(1) to state that the authority of a ''qualified Exchange officer'' to declare an ''Emergency Condition''—which would become a defined term under the amended rule—shall include the authority to designate NYSE Arca to perform the functions set forth in the Rule ''on behalf of and at the direction'' of the NYSE.

Rule 49(a)(2) would be amended to remove a reference to the NYSE's systems and facilities, including the trading floor, continuing to operate during the Emergency Condition. The text would be revised to provide that an Emergency Condition declaration may be made if necessary so that the securities markets, in general, may continue to operate and so that trading in NYSE-listed securities, in particular, may continue to occur in a manner consistent with the protection of investors and in pursuit of the public interest. In Rule 49(a)(3), the subparagraphs would be re-designated so that the rule text follows a consistent convention.

Current Rules 49(b)(1) and 49(b)(2)(i), which include text describing how the NYSE would halt trading and how NYSE Arca would begin receiving and processing bids and offers and executing orders on behalf of the Exchange beginning on the next trading day, would be deleted and replaced with text that more specifically describes the steps that each exchange would take upon the declaration of the Emergency Condition.

Specifically, proposed Rule 49(b)(1) would provide that, when an Emergency Condition is declared, the NYSE would: (A) Halt all trading conducted on the NYSE's systems and facilities and would not route any unexecuted orders to NYSE Arca; (B) accept cancellations for Good 'Til Cancelled (''GTC'') orders; and (C) purge any unexecuted orders from the NYSE's own systems and facilities as soon as practicable following declaration of the Emergency Condition.

Proposed Rule 49(b)(2) would provide that, beginning on the next trading day following the declaration of the Emergency Condition,[21] NYSE Arca, on behalf of and at the direction of the NYSE, would: (A) Disseminate the official opening, re-opening, and closing transactions in NYSE-listed securities as messages of the NYSE (with the ''N'' designation); and (B) disseminate notifications to the CQS for NYSE-listed securities of (i) regulatory halts and resumption of trading thereafter, (ii) trading pause and resumption of trading thereafter, and (iii) Short Sale Price Test trigger and subsequent lifting (collectively, ''primary listing market notifications'') as messages of both the NYSE (with the ''N'' designation) and NYSE Arca (with the ''P'' designation).[22] Bids and offers for NYSE-listed securities entered on NYSE Arca during the Emergency Condition would be reported to CQS as bids or offers of NYSE Arca, except that the opening quote would be reported to CQS as a bid or offer of both the NYSE and NYSE Arca.[23] Bids and offers for NYSE-listed securities executed on or through NYSE

[15] *See* NYSE Rule 49 Approval Order, *supra* note 10, 74 FR at 68643 n.12.

[16] *See* NYSE Rule 49(b)(3)(i)(A); *see also* NYSE Arca Equities Rule 2.100(b)(3).

[17] *See* NYSE Rule 49(b)(2)(iii).

[18] *See* NYSE Rule 49(b)(3)(i)(B); *see also* NYSE Arca Equities Rule 2.100(b)(3)(i)(C).

[19] *See* NYSE Rule 49(b)(4)(i)–(ii); *see also* NYSE Arca Equities Rule 2.100 (b)(4).

[20] *See* NYSE Rule 49(b)(5); *see also* NYSE Arca Equities Rule 2.100(b)(5).

[21] The NYSE noted in its filing that its current and proposed disaster recovery plans do not enable the intra-day failover of the NYSE's system onto NYSE Arca.

[22] *See* NYSE Rules 80B, 80C, and 440B. As the NYSE observed in its filing, each of these types of notifications is a responsibility of the primary listing market for a security. Because the NYSE is not able to force an intra-day failover of the NYSE's system to NYSE Arca, *see supra* note 21, in the event of an intra-day declaration of an Emergency Condition, the NYSE would manually disseminate these primary listing market notifications to CQS.

[23] The Exchanges noted that the plan to disseminate the opening quote as a bid or offer of both the NYSE and NYSE Arca would apply in the event there were no opening auction, for instance, as a result of insufficient volume, and trading opened on a quote, to the extent doing so is authorized under the NYSE's current rules. *See* NYSE Rules 115A(b)(2) and 123D(1).

Arca during the Emergency Condition would be reported to CTA as executions of NYSE Arca, except that executions in the opening,[24] re-opening, or closing auctions would be reported only as NYSE executions and NYSE volume in order to avoid any double counting.

Current Rule 49(b)(2)(iii) provides that members and member organizations must have contingency plans for changing the routing instructions for their order entry systems, and that they take such other appropriate actions as instructed by the NYSE, to accommodate the use of the systems and facilities of NYSE Arca to trade NYSE-listed securities. The proposed rule change would re-designate this provision as Rule 49(b)(3) and amend the text to provide that members and member organizations wishing to trade NYSE-listed securities during an Emergency Condition would be responsible for having contingency plans to establish connectivity to NYSE Arca and for changing the routing instructions for their order entry systems to route quotes and orders in NYSE-listed securities to NYSE Arca.

Such connectivity and routing could be established either directly by becoming an NYSE Arca member (technically referred to as an NYSE Arca Equity Trading Permit (''ETP'') Holder) or indirectly through a third party, such as a service bureau, that is an ETP Holder. The NYSE would not have the ability to reroute quotes and orders from NYSE to NYSE Arca on behalf of members and member organizations, as noted in proposed Rule 49(b)(1)(A). The proposed rule change would also delete text stating that the NYSE would provide instructions to its members and member organizations about using NYSE Arca facilities because, as NYSE members would be required under the proposed rule either to become NYSE Arca ETP Holders or to access NYSE Arca through an ETP Holder, such instructions would no longer be necessary.

Current Rule 49(b)(3), which, during an emergency, provides NYSE members with temporary membership at NYSE Arca and deems NYSE DMMs to be NYSE Arca Market Makers, would be deleted in its entirety. The NYSE explained that it proposed this change because all trading would occur under the NYSE Arca SRO either via a direct membership as an ETP Holder or indirectly via a service bureau as described above, making temporary memberships unnecessary. Additionally, the NYSE stated that, upon further review, it has determined that there would be substantial technological difficulties for NYSE DMMs to become established as NYSE Arca Market Makers during the Emergency Condition and to comply with quoting obligations under NYSE Arca Equities Rule 7.23, as that rule was amended in 2011.[25] At the same time, the NYSE asserted that it would be technologically impracticable and inconsistent with the structure of the proposed rule change to impose NYSE's DMM requirements in a different market. Accordingly, under the proposed rule, if an NYSE DMM wanted to be able to act as an NYSE Arca Market Maker during the Emergency Condition, it would have to apply for and obtain this market maker status in advance.

Rule 49(b)(4) would be amended to state that all trading on NYSE Arca during an Emergency Condition would occur pursuant to NYSE Arca rules, surveillance, and discipline. Current Rule 49(b)(4) already provides that that NYSE Arca trading rules would apply to all trading on NYSE Arca during an emergency condition, so this feature of the rule would not change.[26] Current Rule 49(b)(4), however, further provides that NYSE Arca rules will, during the emergency, be considered rules of the NYSE, and this provision would be deleted by the proposal. Furthermore, the NYSE proposes to delete current Rule 49(b)(5), which states that NYSE Arca will provide surveillance on behalf of the NYSE for trading of NYSE-listed securities during an emergency and that members and member organizations shall remain subject to the NYSE's jurisdiction for any disciplinary actions related to the trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca. Thus, under the terms of the proposal, if an NYSE member organization violated an NYSE Arca trading rule while trading on NYSE Arca during an Emergency Condition, it would be subject to discipline by NYSE Arca, not the NYSE.

NYSE MKT's Adoption of NYSE Rule 49

NYSE MKT currently does not have a rule setting forth its authority and procedures in the event of an emergency. NYSE MKT thus proposes to adopt an identical version of NYSE Rule 49 as NYSE MKT Rule 49—Equities. The proposed rule would provide NYSE MKT officials with the same emergency powers that NYSE Rule 49 would vest in NYSE officials. Proposed NYSE MKT Rule 49—Equities would also, like NYSE Rule 49, rely on NYSE Arca for trading and quoting activity in NYSE MKT-listed securities during an Emergency Condition.

NYSE Arca's Proposed Revisions to NYSE Arca Equities Rule 2.100

Current NYSE Arca Equities Rule 2.100 mirrors and effectuates current NYSE Rule 49. NYSE Arca proposes to amend Rule 2.100 to incorporate the proposed revisions to NYSE Rule 49. NYSE Arca also has proposed to add NYSE MKT as an affiliate exchange that may declare an Emergency Condition and designate NYSE Arca as its alternative trading facility. No elements of the NYSE Arca proposal would have any independent operation beyond effectuating the proposed revisions to NYSE Rule 49 and NYSE MKT Rule 49—Equities.

III. Comment Letters and the Exchanges' Responses

The Commission received two comments on the proposals. Both comment letters broadly supported the Exchanges' proposals.

The first letter asserted that the proposed changes to NYSE Rule 49 ''would appropriately focus [the NYSE's] trading operations during an emergency condition on those services for which the NYSE is the sole provider in the securities market.''[27] Specifically, this commenter expressed support for the NYSE's proposal to eliminate the requirement that NYSE DMMs satisfy market maker obligations as NYSE Arca Market Makers during an emergency condition, because the commenter believes that such a revision would eliminate potential and unnecessary operational risks.[28] For instance, according to the commenter, the NYSE's proposal to eliminate the requirement

[24] The Exchanges noted that if an issuer were to proceed with an initial public offering during an emergency, then, consistent with the proposal, the opening execution would print only with the NYSE's ''N'' designation. The Exchanges noted further that an issuer could alternatively choose to delay a scheduled initial public offering until the emergency was resolved and the NYSE was fully operational again.

[25] *See* Securities Exchange Act Release No. 64422 (May 6, 2011), 76 FR 27691 (May 12, 2011) (SR–NYSEArca–2011–26).

[26] The proposed revisions to Rule 49(b)(4) would also specify that such NYSE Arca trading rules include, but are not limited to, the opening, reopening, and closing auction processes applicable to securities for which NYSE Arca is the primary listing market set forth in NYSE Arca Equities Rule 7.35. As the NYSE noted in its filing, NYSE Arca's auction processes at the open, at the close, and following a trading halt differ from those of NYSE. The provision in current Rule 49(b)(4)(ii) that specifies that the NYSE's listing requirements would continue to apply to any NYSE-listed security that was trading on NYSE Arca during the Emergency Condition would be incorporated without change into revised Rule 49(b)(4).

[27] *See* KCG Letter, *supra* note 4, at 2.

[28] *See id.*

that NYSE members and member organizations connect and send quotes and orders for NYSE-listed securities to NYSE Arca during an emergency condition would avoid the risks associated with NYSE members trading on NYSE Arca without sufficient experience.[29] Additionally, the commenter supported the feature of the NYSE's proposal concerning NYSE Arca's dissemination of the opening and closing prices and the primary listing market notifications as messages of both NYSE Arca and the primary listing market, because doing so would minimize operational risks and challenges to market participants.[30]

The second commenter similarly characterized the proposals as ''a step forward to addressing industry concerns with the current NYSE Rule 49.'' [31] In particular, the second commenter highlighted the following elements of the Exchanges' proposals that it considers critical to an orderly transition of trading activity during an emergency: (1) Next-day resumption of trading on NYSE Arca, because an intra-day failover would not allow firms sufficient time to make necessary changes and adequately test those changes; (2) printing orders routed to NYSE Arca as orders of NYSE Arca, with the ''P'' designation, rather than as orders of NYSE, because doing so will conform to firms' front, middle, and back office expectations that orders routed to an exchange will result in executions and clearing activity associated with that same exchange; (3) printing opening closing prints with both the ''P'' and the ''N'' or ''A'' designations, because doing so accommodates the reliance of some firms and processes on the primary market print; [32] and (4) the provisions of the proposal relating to NYSE Arca membership.[33]

The second commenter coupled its support with three recommendations that it says are aimed at fully assessing the policies and procedures outlined in the proposals: (1) The creation of a robust test plan for the industry to test and evaluate readiness; (2) the establishment of an ''Emergency Powers Playbook'' designed for operations and technology staff that includes timelines and activities for entering, operating under, and exiting the emergency powers state; and (3) the development and deployment of a communications plan designed to familiarize the industry with the proposals once approved.[34]

In response to the second comment letter, the Exchanges stated their belief that the FIF's three recommendations relate to the technical implementation of the proposed rules and do not require the proposed rules to be amended.[35] The Exchanges noted further that they have already begun working closely with industry participants on the implementation of the proposed rules.[36] The Exchanges represented that they had scheduled an industry test for September 21, 2013 and that they would continue to work with industry groups and the Exchanges' member organizations to ensure appropriate communications and testing opportunities.[37]

IV. Discussion and Commission Findings

After careful review of the proposals, the comment letters received, the Exchanges' response, and the proposed amendments reflecting the outcome of the industry-wide test of the changes contemplated by the proposals, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[38] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[39] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule changes are consistent with Section 6(b)(7) of the Act,[40] which requires, among other things, that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members.

The Commission finds that the proposals are reasonably designed to maintain orderly trading in NYSE- and NYSEMKT-listed securities in the event those exchanges experience an emergency.[41] The Commission previously approved the NYSE's plan, under Rule 49, to rely on NYSE Arca as a backup trading facility that would receive and process quotations and orders in NYSE-listed securities.[42] At that time, the Commission noted that it had also approved proposals by other national securities exchanges to establish back-up trading arrangements.

The NYSE's proposed Rule 49 would continue to rely on NYSE Arca as a backup trading facility beginning no earlier than the next trading day after an emergency. As such, it does not represent a fundamental shift in the NYSE's approach to business continuity planning. Rather, the most significant feature of the revisions to Rule 49 would provide that, while acting as an emergency backup, NYSE Arca would disseminate quotations and orders in NYSE-listed securities as quotations and orders of NYSE Arca, rather than those of NYSE, with limited exceptions. These exceptions would be the primary listing market notifications and opening or re-opening quotes, which would be disseminated as messages of both NYSE Arca and NYSE, and the opening, re-opening, and closing transactions, which would be disseminated only as messages of the NYSE. Likewise, under new NYSE MKT Rule 49—Equities, NYSE Arca would serve as the backup for NYSE MKT, and it would disseminate quoting and trading activity in NYSE MKT-listed securities as ''P,'' with the same exceptions for primary

[29] *See id.* at 4 .

[30] *See id.* at 2.

[31] *See* FIF Letter, *supra* note 4, at 1.

[32] The commenter qualified its support of this point by observing that firms will need to test this process to ensure that they can properly handle both prints. The Commission notes that, as a result of the industry-wide test conducted on September 21, 2013, the Exchanges in fact altered this element of the proposal. As described more fully above, *supra* notes 21 to 24 and accompanying text, under the amended proposals, NYSE Arca would disseminate primary listing market notifications and opening or re-opening quotes with both the primary market ''N'' or ''A'' designation along with the NYSE Arca's ''P'' designation. However, under the amended proposals, the opening, re-opening, and closing transactions would be disseminated as messages only of the primary listing market, *i.e.,* as ''N'' or ''A'' only.

[33] *See* FIF Letter, *supra* note 4, at 1–2.

[34] *See id.* at 2.

[35] *See* Exchanges' Response Letter, *supra* note 4, at 1. As noted above in this Order, the Exchanges did in fact amend the proposals in response to the results of the industry-wide test that was conducted on September 21, 2013.

[36] *See id.* at 2.

[37] *See id.*

[38] In approving the proposals, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78f(b)(7).

[41] The Commission notes, as did KCG in its comment letter, that these proposals do not relate to the NYSE's role as Administrator for Network A, or the NYSE's role as the Securities Information Processor (SIP) for NYSE-listed securities.

[42] *See* NYSE Rule 49 Approval Order, *supra* note 10, 74 FR at 68643.

listing market notifications, opening or re-opening quotes, and opening, re-opening, and closing trades.

The Exchanges have represented, and the commenters have agreed, that this proposed change would better align the Exchanges' rules with the capabilities and preferences of the industry. In particular, the Commission understands from the Exchanges that, when firms route quotes or orders to an exchange, they expect to receive return messages, such as confirmations, under the same exchange's designation.[43] For certain messages, however, such as the opening, re-opening, and closing prints, opening and re-opening quotes, and primary listing market notifications, the Exchanges have represented, based on the results of an industry-wide test and feedback from market participants, that firms' systems may need to see the listing market designation—''N'' for NYSE and ''A'' for MKT.[44]

Accordingly, the Commission believes that the proposals are intended to maintain orderly trading during an emergency and to do so in a way that is compatible with the systems of most industry participants.[45] The Commission notes, importantly, that the Exchanges recognize that they remain the SROs that are legally responsible for their primary listing market functions, even though certain messages, such as primary listing market notifications, would be disseminated with a ''P'' in addition to the primary listing market designation.[46] The Commission further notes that, under the proposals, volume associated with opening and closing transactions for NYSE-listed securities would be reported only as NYSE volume to avoid double counting.

The Commission also finds that the proposed revisions to Rule 49's requirements concerning NYSE members and member organizations are consistent with the Act. Rule 49, as revised, would require NYSE members and member organizations wishing to trade NYSE-listed securities during an Emergency Condition to be responsible for having contingency plans to establish connectivity to NYSE Arca and for routing quotes and orders there. As the FIF Letter points out, these revised provisions should help ensure that the firms transacting in NYSE- or NYSE MKT-listed securities on NYSE Arca have experience doing so. And while the Exchanges propose to eliminate the current NYSE rule's requirement that NYSE DMMs be subject to NYSE Arca quoting obligations for Market Makers, DMMs trading NYSE- or NYSE MKT-listed securities on NYSE Arca during an emergency would not receive any special benefits in connection with such trading. DMMs that wish to act as NYSE Arca Market Makers during an Emergency Condition would have to apply for and obtain Market Maker status on NYSE Arca in advance.

Finally, the Commission finds the proposals consistent with the Act to the extent that they would subject all trading on NYSE Arca during an Emergency Condition to NYSE Arca rules, surveillance, and discipline. Current Rule 49 already establishes that NYSE Arca trading rules would apply to trading on its facility in NYSE-listed stocks during an emergency, and this would remain unchanged under the proposals. Accordingly, the Commission finds it appropriate for NYSE Arca to be the SRO responsible for enforcing its rules with respect to trading that occurs on its facility. The Commission notes again, however, that these proposed provisions do not alter the NYSE's or NYSE MKT's responsibilities as primary listing markets.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[47] that the proposed rules changes (SR–NYSE–2013–54; SR–NYSEMKT–2013–66; and SR–NYSEARCA–2013–77) as amended, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27052 Filed 11–12–13; 8:45 am]

BILLING CODE 8011–01–P

[43] *See* FIF Letter, *supra* note 4, at 1.

[44] The NYSE also provided additional justification for utilizing a primary market print for the opening and closing transactions, including that private corporate transactional contracts involving stock purchases or valuations frequently make reference to the primary market print rather than to the CTA print and that the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

[45] The Commission acknowledges that the proposed rule changes could require systems changes across the industry, and it appreciates the points that the FIF Letter raises concerning testing and implementation. The Exchanges represent that they are working with FIF and other industry participants to promote smooth adoption of the changes. Moreover, the Exchanges have stated that the proposals, as amended, incorporate feedback received from market participants who took part in an industry-wide test of the proposed changes.

[46] *See, e.g.,* NYSE Notice, *supra* note 3, 78 FR at 48524 n.9.

[47] 15 U.S.C. 78s(b)(2).

[48] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Far Vista Petroleum Corp.; Order of Suspension of Trading

November 8, 2013.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Far Vista Petroleum Corp. (''FVSTA'') because of questions that have been raised about the accuracy and adequacy of publicly disseminated information concerning, among other things, FVSTA's business prospects, operations, and control. FVSTA is a Nevada corporation based in Levittown, NY. It is quoted on the OTC Link under the symbol FVSTA.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on November 8, 2013 through 11:59 p.m. EST on November 21, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–27238 Filed 11–8–13; 4:15 pm]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2013–0057]

Cost-of-Living Increases and Other Determinations for 2014; Correction

AGENCY: Social Security Administration.

ACTION: Notice; Correction.

SUMMARY: The Social Security Administration published a document in the **Federal Register** of November 5, 2013, concerning the cost-of-living increase in Social Security benefits effective December 2013. The document contains an incorrect number for the special minimum primary insurance amount (PIA) for 16 years of coverage.

FOR FURTHER INFORMATION CONTACT: Susan C. Kunkel, 410–965–3000.

Correction

In the **Federal Register** of November 5, 2013, in FR Doc. 2013–26569, on page 66414, in the second column, replace the ''PIA'' amount for ''16 years of

coverage'' ''$243.50'' with the correct amount of ''$243.60'.

Paul Kryglik,

Director, Office of Regulations and Reports Clearance.

[FR Doc. 2013–27023 Filed 11–12–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8518]

Culturally Significant Objects Imported for Exhibition Determinations: ''Renaissance to Goya: Prints and Drawings from Spain''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition ''Renaissance to Goya: Prints and Drawings from Spain,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the New Mexico Museum of Art, from on or about December 14, 2013, until on or about March 9, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 1, 2013.

Evan M. Ryan,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–27136 Filed 11–12–13; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 13–04]

Sunshine Act Meeting

The TVA Board of Directors will hold a public meeting on November 14, 2013, at The Inn at Ole Miss, Oxford, Mississippi. The public may comment on any agenda item or subject at a *public listening session* which begins at 9 a.m. (CT). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 9 a.m. (CT). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

Status: Open.

Agenda

Chairman's Welcome

Old Business

Approval of minutes of August 22, 2013, Board Meeting

New Business

1. Report from President and CEO
2. Report of the Finance, Rates, and Portfolio Committee
   A. Financial Performance Update
   B. Section 13 Tax Equivalent Payments
   C. Generation Fleet Planning
   1. Coal Retirements and Gas Capacity
3. Report of the People and Performance Committee
   A. Fiscal Year 2013 Performance and Compensation
   B. Board Chair
4. Report of the Audit, Risk, and Regulation Committee
   A. Accounting Treatment of Regulatory Assets
5. Report of the Nuclear Oversight Committee
   A. Watts Bar 2 Update
6. Report of the External Relations Committee
7. Committee Assignments
8. Recognition of Director Neil McBride

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: November 7, 2013.

Ralph E. Rodgers,

General Counsel and Secretary.

[FR Doc. 2013–27219 Filed 11–8–13; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending October 26, 2013. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2013–0189.

Date Filed: October 24, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 14, 2013.

Description: Application of Luxaviation Societe Anonyme requesting the issuance of a foreign air carrier permit and an exemption authorizing it to engage in: (i) Foreign charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Union, via any point or points in any EU Member State and via intermediate points, to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign charter air transportation of cargo between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements set forth in the Department's regulations governing charters; and (v) charter transportation authorized by any additional route

rights made available to European Union carriers in the future.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2013–27103 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–39]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 3, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0710 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 4, 2013.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2013–0710.

Petitioner: Atlas Air, Inc.

Section of 14 CFR Affected: 14 CFR § 121.1005.

Description of Relief Sought: Atlas Air seeks relief to have the ability to provide training on any pre-transportation functions related to handling hazmat (including but not limited to acceptance, rejection, handling, storage incidental to transport, packaging, or loading, or any function listed under § 121.1001(a)) for individuals used by Atlas and received hazmat training from a foreign air carrier issued operations specifications under 14 CFR part 129. Atlas has determined this training is substantially similar to Atlas's FAA-approved training and satisfies international hazardous materials training standards provided by Hazardous Materials Regulations (HMR) or the International Civil Aviation Organization's Technical Instructions (ICAO TI), and all other 14 CFR requirements.

[FR Doc. 2013–27032 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Los Angeles County, California.

DATES: Public Scoping meetings will be held in early part of 2014.

FOR FURTHER INFORMATION CONTACT: Tami Podesta, California Department of Transportation (Caltrans), 100 S. Main Street, Los Angeles, CA 90012, telephone (213) 897–0309 and *tami_podesta@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities fOr this project pursuant to 23 U.S.C. 327. Caltrans as the assigned National Environmental Policy Act (NEPA) agency will prepare an Environmental Impact Statement on a proposal for State Route 138 (SR–138) Northwest Corridor Improvement project in Los Angeles County, California. This project is located in northern Los Angeles County, three miles south of the Kern County Line and passing within one-half mile of the northernmost limits of the City of Lancaster. The project extends from Interstate 5 (1–5) on the west to State Route 14 (SR–14) on the east, a distance of approximately 36 miles. It is currently a two-lane rural highway with no access control. SR–138 Northwest Corridor Improvement Project proposes to improve the highway as a freeway, expressway with access control and/or traffic system/multi-modal facility. The SR–138 currently supports the regional transportation needs of the local community, and serves as an alternate route for east-west traffic in northern Los Angeles County.

Four alternatives are identified for the project corridor. Alternative 1 is an expressway facility throughout the entire corridor. Alternative 2 is a freeway/expressway facility throughout the entire corridor. Alternative 3 is a traffic system/multi-modal facility throughout the entire corridor. Alternative 4 is the No-Build Alternative.

These alternatives may be refined, combined with various different alternatives, or be removed from further consideration, as more analysis is conducted on the project alternatives. Analysis supporting the EIS will determine the type of facility necessary to meet the existing and future

transportation needs in the corridor. Section 404 Permit may be required from U.S. Army Corp of Engineers under the Clean Water Act. In addition, Caltrans will coordinate with U. S. Fish and Wildlife Service under Section 7 of the Federal Endangered Species Act and request and receive species lists, prepare the biological assessment, and conduct the formal consultation.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Participating Agencies, local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public Scoping meetings will be held in the early part of 2014. The public outreach/information program will continue throughout the environmental document phase for the proposed project. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Matt Schmitz,

Director, Project Delivery, Federal Highway Administration, Sacramento, California.

[FR Doc. 2013–26948 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0348]

Agency Information Collection Activities; Revision of an Approved Information Collection: Practices of Household Goods Brokers

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to revise an ICR titled ''Practices of Household Brokers'' to no longer include one-time costs previously incurred by brokers to come into compliance with 49 CFR part 371, and to update other wage related costs that have changed since the last approval. This ICR is necessary to support the requirements of subpart B of 49 CFR part 371 and FMCSA's responsibility to ensure consumer protection in the transportation of household goods (HHG).

DATES: We must receive your comments on or before January 13, 2014.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2013–0348 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 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. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Mack, Commercial Enforcement and Investigations Division, Household Goods Team Leader, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–366–8045; email *brodie.mack@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: FMCSA, in response to Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) and a petition for rulemaking from the American Moving and Storage Association (AMSA), amended 49 CFR part 371, existing regulations for brokers, with a Final Rule titled, ''Brokers of Household Goods Transportation by Motor Vehicles'' (75 FR 72987), November 29, 2010, providing additional consumer protection responsibilities for brokers of HHG.

Section 4212 of SAFETEA–LU directs the Secretary to require HHG brokers to provide individual shippers with the following information whenever a broker has contact with a shipper or potential shipper:

1. The broker's USDOT number.
2. The FMCSA booklet titled ''Your Rights and Responsibilities When You Move.''
3. A list of all authorized motor carriers providing transportation of HHG used by the broker and a statement that the broker is not a motor carrier providing transportation of HHG.

FMCSA, as the result of a rulemaking that took effect November 29, 2010, amended 49 CFR part 371 by adding subpart B, specific consumer protection requirements for HHG brokers. The

collection of information required by this rulemaking assist shippers in their business dealings with interstate HHG brokers. The information collected is used by prospective shippers to make informed decisions about contracts, services ordered, executed, and settled. The HHG broker is often the primary contact for individual shippers and in the best position to educate shippers and prepare them for a successful move. The information collected makes that possible. To combat deceptive business practices this helps enforcement personnel to better protect consumers by verifying that shippers are receiving information they are entitled to by regulation.

HHG brokers are required to provide individual shippers the ''Your Rights and Responsibilities When You Move'' booklet and the ''Ready to Move'' brochure. They have the option of providing paper copies or presenting the information through a link on their Internet Web site. The broker is required to document with signed receipts that the individual shipper was provided those materials. HHG brokers are also required to provide the list of HHG motor carriers for which it would arrange transportation to move a potential individual shipper's HHG, and that broker's identification information:

1. Assigned USDOT number; and
2. Address.

Title: Practices of Household Goods Brokers.

OMB Control Number: 2126–0048.

Type of Request: Revision of a currently approved collection.

Respondents: Brokers of Household Goods.

Estimated Number of Respondents: 690.

Estimated Time per Response: 15 minutes per day × 240 workdays for household goods broker transactions.

Expiration Date: February 28, 2014.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 89,607 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will reference your comments in the request for OMB's clearance of this information collection.

Issued under the authority delegated in 49 CFR 1.87 on: November 1, 2013.

G. Kelly Leone,

Associate Administrator, Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2013–27115 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2006–26066; FMCSA–2006–26653; FMCSA–2007–27897; FMCSA–2011–0141]

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 25 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 October 30, 2013. Comments must be received on or before December 13, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–1999–5748; FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2006–26066; FMCSA–2006–26653; FMCSA–2007–27897; FMCSA–2011–0141], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 25 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 25 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Tracy A. Ammons (NC)
David N. Cleveland (ME)
Randy B. Combs (KY)
Robert L. Cross, Jr. (MO)
James D. Davis (OH)
Edward J. Genovese (IN)
Dewayne E. Harms (IL)
David F. LeClerc (MN)
Paul G. Mathes (WA)
Kevin L. Moody (OH)
Terry W. Moore (LA)
Charles W. Mullenix (GA)
Richard W. O'Neill (WA)
Robert M. Pickett II (MI)
John N. Poland (IL)
Eligio M. Ramirez (TX)
Garry L. Rogers (CO)
Donald J. Snider (IN)
Wilfred E. Sweatt (NH)
Jesse L. Townsend (LA)
Humberto A. Valles (TX)
James A. Welch (NH)
Gary M. Wolff (IL)
John C. Young (VA)
Michael E. Yount (ID)

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 25 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404; 64 FR 68195; 66 FR 30502; 68 FR 52811; 70 FR 48797; 71 FR 63379; 72 FR 39879; 72 FR 8417; 72 FR 46261; 76 FR 40445). Each of these 25 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 13, 2013.

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 25 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–1999–5748; FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2006–26066; FMCSA–2006–26653; FMCSA–2007–27897; FMCSA–2011–0141 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to

http://www.regulations.gov and in the search box insert the docket number FMCSA–1999–5748; FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2006–26066; FMCSA–2006–26653; FMCSA–2007–27897; FMCSA–2011–0141 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued On: November 1, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–27113 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0191]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 39 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 13, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0191 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 Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may 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 39 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 statute.

Qualifications of Applicants

Ryan P. Abrahamsen

Mr. Abrahamsen, 24, has had ITDM since 1996. His endocrinologist examined him in 2013 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. Abrahamsen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Abrahamsen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

Dylan J. Bryan

Mr. Bryan, 21, has had ITDM since 2012. His endocrinologist examined him in 2013 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. Bryan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bryan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Illinois.

Robert A. Collins

Mr. Collins, 55, has had ITDM since 2013. His endocrinologist examined him in 2013 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. Collins understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Collins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Fred J. Combs

Mr. Combs, 60, has had ITDM since 1969. His endocrinologist examined him in 2013 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. Combs understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Combs meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Ohio.

Edward DeFrancesco

Mr. DeFrancesco, 36, has had ITDM since 2012. His endocrinologist examined him in 2013 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. DeFrancesco understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. DeFrancesco meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Terrance J. Dusharm

Mr. Dusharm, 55, has had ITDM since 2012. His endocrinologist examined him in 2013 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. Dusharm understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dusharm meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Jonathan W. Eggers

Mr. Eggers, 27, has had ITDM since 2013. His endocrinologist examined him in 2013 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. Eggers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eggers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

John L. Eversole

Mr. Eversole, 65, has had ITDM since 2012. His endocrinologist examined him in 2013 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. Eversole understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eversole meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wyoming.

Gilbert N. Fugate

Mr. Fugate, 60, has had ITDM since 2010. His endocrinologist examined him in 2013 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. Fugate understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fugate meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class operator's license from Indiana.

Scott C. Garbiel

Mr. Garbiel, 45, has had ITDM since 2006. His endocrinologist examined him in 2013 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. Garbiel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garbiel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Maine.

Charles D. Grant

Mr. Grant, 32, has had ITDM since 2012. His endocrinologist examined him in 2013 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. Grant understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Grant meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

William F. Hamann

Mr. Hamann, 36, has had ITDM since 2000. His endocrinologist examined him in 2013 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. Hamann understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hamann meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Kentucky.

Dallis L. Hollon

Mr. Hollon, 60, has had ITDM since 2007. His endocrinologist examined him in 2013 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. Hollon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hollon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

James H. Howard, Jr.

Mr. Howard, 55, has had ITDM since 2012. His endocrinologist examined him in 2013 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. Howard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Howard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Harry R. Jaycox

Mr. Jaycox, 44, has had ITDM since 2013. His endocrinologist examined him in 2013 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. Jaycox understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jaycox meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Jerry J. Klosterman

Mr. Klosterman, 63, has had ITDM since 2006. His endocrinologist examined him in 2013 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. Klosterman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Klosterman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Ohio.

Joseph E. Kolb

Mr. Kolb, 53, has had ITDM since 2011. His endocrinologist examined him in 2013 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. Kolb understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kolb meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Matthew D. Lee

Mr. Lee, 35, has had ITDM since 2003. His endocrinologist examined him in 2013 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. Lee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

Craig A. Lemponen

Mr. Lemponen, 48, has had ITDM since 2012. His endocrinologist examined him in 2013 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. Lemponen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lemponen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Ohio.

Matthew P. Ludwig

Mr. Ludwig, 46, has had ITDM since 2007. His endocrinologist examined him in 2013 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. Ludwig understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ludwig meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New York.

Gerry A. Lutz

Mr. Lutz, 53, has had ITDM since 2007. His endocrinologist examined him in 2013 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. Lutz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lutz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Joel S. Malone

Mr. Malone, 44, has had ITDM since 1976. His endocrinologist examined him in 2013 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. Malone understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Malone meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable proliferative diabetic retinopathy. He holds a Class E operator's license from Louisiana.

Keith B. Masters

Mr. Masters, 58, has had ITDM since 2008. His endocrinologist examined him in 2013 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. Masters understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Masters meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Hampshire.

Eli J. Meekhof

Mr. Meekhof, 26, has had ITDM since 1998. His endocrinologist examined him in 2013 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. Meekhof understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meekhof meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Arthur S. Miller

Mr. Miller, 55, has had ITDM since 2012. His endocrinologist examined him in 2013 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 requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Tennessee.

Jeffrey A. Olson

Mr. Olson, 30, has had ITDM since 1985. His endocrinologist examined him in 2013 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 requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Marvin H. Patterson, III

Mr. Patterson, 39, has had ITDM since 2003. His endocrinologist examined him in 2013 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. Patterson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Patterson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Carolina.

Brandon C. Rhinehart

Mr. Rhinehart, 33, has had ITDM since 2010. His endocrinologist examined him in 2013 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. Rhinehart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rhinehart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Thomas L. Rice

Mr. Rice, 58, has had ITDM since 2007. His endocrinologist examined him in 2013 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. Rice understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Rice meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Tennessee.

Ismael Romero

Mr. Romero, 46, has had ITDM since 2009. His endocrinologist examined him in 2013 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. Romero understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Romero meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Timothy J. Sebald

Mr. Sebald, 21, has had ITDM since 2005. His endocrinologist examined him in 2013 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. Sebald understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sebald meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Erick D. Selgren

Mr. Selgren, 55, has had ITDM since 1981. His endocrinologist examined him in 2013 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. Selgren understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Selgren meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he stable nonproliferative diabetic retinopathy. He holds a Class R operator's license from Colorado.

Donald R. Sine, Jr.

Mr. Sine, 58, has had ITDM since 2005. His endocrinologist examined him in 2013 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. Sine understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sine meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Dennis E. Taunton

Mr. Taunton, 64, has had ITDM since 2013. His endocrinologist examined him in 2013 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. Taunton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Taunton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Phillip A. Trent

Mr. Trent, 50, has had ITDM since 2011. His endocrinologist examined him in 2013 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. Trent understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Trent meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Robert B. Trofa, III

Mr. Trofa, 44, has had ITDM since 1987. His endocrinologist examined him in 2013 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. Trofa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Trofa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Deborah D. Watson

Ms. Watson, 58, has had ITDM since 1998. Her endocrinologist examined her in 2013 and certified that she 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. Her endocrinologist certifies that Ms. Watson understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Watson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2013 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Michigan.

Ronnie C. Webb

Mr. Webb, 64, has had ITDM since 2012. His endocrinologist examined him in 2013 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. Webb understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Webb meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Montana.

Allan D. Wesley

Mr. Wesley, 51, has had ITDM since 2012. His endocrinologist examined him in 2013 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. Wesley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wesley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

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 USC. 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.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2013–0191 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2013–0191 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: November 1, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–27116 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–EX–P

[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.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0109]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of applications for exemption, request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the limited 2-year exemptions would enable these individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before December 13, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–

2013–0109 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.

Each submission must include the Agency name and the docket ID 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 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 the DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Chief, Medical Programs Division, (202) 366–4001, or via email at *fmcsamedical@dot.gov,* or by letter FMCSA, Room W64–113, 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:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption 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 statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 11 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0109'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0109'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Summary of Applications

Jeffrey Ballweg

Mr. Ballweg is a 51 year-old driver in Wisconsin. He has a history of epilepsy and has been seizure free since June of 2006. He takes anti-seizure medication with the dosage and frequency remaining the same since 2006. If granted the exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Ballweg receiving an exemption.

Dean Bretey

Mr. Bretey is a 63 year-old driver in Wisconsin. He has a history of seizures and has remained seizure free for at least 10 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 10 years. If granted the exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Bretey receiving an exemption.

Montie Bullis

Mr. Bullis is a 56 year-old driver in Oklahoma. He has a history of epilepsy and has remained seizure free for 4 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 4 years. If granted the exemption, he would like to continue to drive large trucks. His physician states he is supportive of Mr. Bullis receiving an exemption.

Rick Cote

Mr. Cote is a 55 year-old class A commercial driver's license holder in Oregon. He has a history of epilepsy and has remained seizure free for over 4 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 4 years. If granted the exemption, he would like to drive a commercial tractor. His physician states he is supportive of Mr. Cote receiving an exemption.

David Crowe

Mr. Crowe is a 23 year-old driver in Virginia. He has a history of epilepsy and has remained seizure free since October 2009. He takes anti-seizure medication with the dosage and frequency remaining the same for over 2 years. If granted the exemption, he would like to drive a truck over 10,001 lbs. His physician states he is supportive of Mr. Crowe receiving an exemption.

Dwight Crownover

Mr. Crownover is a 49 year-old driver in New York. He has a history of seizures and has remained seizure free for 29 years. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a delivery truck. His physician states he is supportive of Mr. Crownover receiving an exemption.

Bryan Couture

Mr. Couture is a 48 year-old class B commercial driver's license holder in Rhode Island. He has a history of seizures and has remained seizure free for over 9 years. He takes anti-seizure medication and his seizure medication was changed to a new medication this year. If granted the exemption, he would like to drive a dump truck. His physician states that he is supportive of Mr. Couture receiving an exemption.

John Johnson

Mr. Johnson is a 35 year-old driver in Wisconsin. He has a history of epilepsy and has remained seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same for over 8 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Johnson receiving an exemption.

Michael Schneider

Mr. Schneider is a 27 year-old driver in Wisconsin. He has a history seizure and has remained seizure free since 2004. He does not take seizure medication and states that he has never taken seizure medication. If granted the exemption, he would like to drive a heavy equipment truck. His physician states that he is supportive of Mr. Schneider receiving an exemption.

Barry Von Gulner

Mr. Von Gulner is a 49 year-old driver in Wisconsin. He has a history of a solitary seizure in 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Von Gulner receiving an exemption.

John Welch

Mr. Welch is a 27 year-old class B commercial driver's license holder in New Hampshire. He has a history of seizure and has remained seizure free since 2000. He has not taken seizure medication since 2009. If granted the exemption, he would like to continue to drive a CMV. His physician states that he is supportive of Mr. Welch receiving an exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: November 1, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–27109 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0106]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated August 28, 2013, the Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2013–0106.

Applicant: Norfolk Southern Corporation, Mr. Brian Sykes, Chief Engineer C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

NS seeks approval of the proposed discontinuance of Control Point (CP) Oak and the discontinuance of the traffic control system (TCS) between CP Maumee, Milepost (MP) DY 1.2/CD 287.65, and Stanley, MP DY 4.0, on the Miami Cut Branch, on the Dearborn Division, Toledo, OH. TCS will also be discontinued on the Oakdale Connection Track between CP 286, MP XA 286.90/CD 286.75, and CP Oak, MP XA 287.80/DY 2.3, also on the Dearborn Division, Toledo, OH. CP Oak Signals 2S–1, 2S–3, 2N–1, and 2N–2 will be removed. Power-operated Switch 1 will be converted to a hand-operated switch, and Switch 3 will be converted to a radio-controlled switch. Operating rules will be changed from NS Rule 261 to NS Rule 137 on the Miami Cut Branch and the Oakdale Connection Track. The reason given for the proposed changes is that these tracks are seldom used.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before

the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 30, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, 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 interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2013–27112 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0110]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated October 4, 2013, CSX Transportation (CSX) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2013–0110.

Applicant: CSX Transportation, Mr. David B. Olson, Chief Engineer Communications & Signals, 500 Water Street, Speed Code J–350, Jacksonville, FL 32202.

CSX Transportation (CSX) seeks approval of the proposed discontinuance of a traffic control system (TCS) on main tracks between Control Point (CP) Mount Morris, Milepost (MP) CC–26.2, and CP Middle River, MP CC–80.6, on the Saginaw Subdivision, Chicago Division, Saginaw, MI. A total of 67 controlled signals and 20 automatic signals will be removed, with 28 power-operated switches converted to hand operation. Approach signals will be installed at MP CC–27.9, CC–32.9, CC–35.0, CC–49.1, CC–51.5, and CC–74.9. CSX Rule 261 will be replaced and operation will be under DCS/track warrant control rules. There are two locations that will remain as a TCS, with signals remaining in operation. Those locations are at CP South Kearsley, MP CC–33.54, an at-grade railroad crossing with the Grand Trunk Railway, and at CP Holly, CC–50.42, an at-grade railroad crossing with the Canadian National Railway. These locations will continue to be operated under CSX Rule CPS–261.

In its petition, CSX states that it seeks the proposed changes because CSX Rule CPS–261 is no longer needed for present-day operations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 30, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, 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 interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2013–27111 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0117]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KARIBELLA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before December 13, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0117. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE.,

Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel KARIBELLA is:

Intended Commercial Use Of Vessel: ''Private Vessel Charters, Passengers Only''

Geographic Region: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska and waters North of a line between Gore Point to Cape Suckling [including the North Gulf Coast and Prince William Sound]).''

The complete application is given in DOT docket MARAD–2013–0117 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: November 7, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–27161 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0123]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel IMPROMPTU; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before December 13, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0123. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel IMPROMPTU is:

Intended Commercial Use Of Vessel: ''Passenger Charters''.

Geographic Region: Florida, Georgia, South Carolina, North Carolina, Virginia, New York, Connecticut, Rhode Island, Massachusetts.

The complete application is given in DOT docket MARAD–2013–0123 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: November 7, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–27146 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0124]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEA HUNT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before December 13, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0124. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEA HUNT is:

Intended Commercial Use of Vessel: ''Charter for pleasure, overnight stays, trips from San Diego to Catalina''.

Geographic Region: ''California''.

The complete application is given in DOT docket MARAD–2013–0124 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: November 7, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–27150 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0120]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel VALIANT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before December 13, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0120. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VALIANT is:

Intended Commercial Use Of Vessel: ''Passenger Charter''.

Geographic Region: California.

The complete application is given in DOT docket MARAD–2013–0120 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: November 7, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–27143 Filed 11–12–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request

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 comment on the renewal of an 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 Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of an information collection titled, ''Record and Disclosure Requirements—Consumer Financial Protection Bureau Regulations B, C, E, M, Z, and DD and Board of Governors of the Federal Reserve System Regulation CC.''

DATES: Comments must be submitted on or before January 13, 2014.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0176, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Record and Disclosure Requirements—Consumer Financial Protection Bureau (CFPB) Regulations B, C, E, M, Z, and DD and Board of Governors of the Federal Reserve System (FRB) Regulation CC.

OMB Control No.: 1557–0176.

Type of Review: Regular review.

Description: This information collection covers CFPB Regulations B, C, E, M, Z, and DD and FRB Regulation CC. The CFPB and FRB Regulations include the following provisions:

Reg B—12 CFR 1002—Equal Credit Opportunity

This regulation prohibits lenders from discriminating against credit applicants, establishes guidelines for gathering and evaluating information about personal characteristics in applications for certain dwelling-related loans, requires lenders to provide applicants with copies of appraisal reports in connection with credit transactions, and requires written notification of action taken on a credit application.

Reg C—12 CFR 1003—Home Mortgage Disclosure

This regulation requires certain mortgage lenders to report certain home loan application information and to disclose certain data regarding their home mortgage lending.

Reg E—12 CFR 1005—Electronic Fund Transfers

This regulation establishes the rights, liabilities, and responsibilities of parties in electronic fund transfers and offers protections to consumers when they use such systems.

Reg M—12 CFR 1013—Consumer Leasing

This regulation implements the consumer leasing provisions of the Truth in Lending Act by requiring meaningful disclosure of leasing terms.

Reg Z—12 CFR 1026—Truth in Lending

This regulation prescribes uniform methods for computing the cost of credit, disclosing credit terms and costs, and resolving errors on certain types of credit accounts.

Reg CC—12 CFR 1029—Availability of Funds and Collection of Checks

This regulation establishes timeframes to govern the availability of funds deposited in checking accounts, rules to govern the collection and return of checks, and general provisions to govern the use of substitute checks.

Reg DD—12 CFR 1030—Truth in Savings

This regulation requires depository institutions to provide disclosures sufficient to enable consumers to make informed comparisons about accounts at depository institutions.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 1,700.

Estimated Annual Burden: 4,756,910 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(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: November 7, 2013.

Stuart E. Feldstein,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–27128 Filed 11–12–13; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending September 30, 2013. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABRAHAM	RUTHIE	
ADAMS	CAROLINE	FRANCES
ADAMS	LAWRENCE	BRUCE
AIERS	RODGER	CHARLES
AL RAIS	AHMED	SALIM
ALBRECHT-FENNER	SOPHIE	VIOLETTE
ALEXANDER	RICHARD	FRANCIS
ALFARO	LAURY	MELO
ALLAMON	MARCUS	MANFRED
AMEMIYA	SATOSHI	
AMUNDRUD	RYAN	MICHAEL
ARESON JR	WILLIAM	HENRY
ARLETTE	DEBRA	JOANNA
ATTIEH	DINA	NASSAR
AWAD	CHARLES	
BACARES	ANGELA	MARIA
BACHMANN	ANDREW	GREGORY
BAKER	ANGELA	CATHLEEN
BALFOUR–LYNN	JAKE	STANLEY
BALFOUR–LYNN	JESSIE	NANNETTE
BALFOUR–LYNN	LESLIE	
BALLMER	YVONNE	MARION
BANDY	TIMOTHY	JOHN
BARBAKOFF	MICHAEL	HERBERT
BARON	LISA	
BATAILLON	MARC	ALAIN ROBERT
BAUREITHEL	KARL	HERBERT
BEECHING	SUSAN	MARIE
BENNETT	SUSAN	JANE
BERAHA	ALBERTO	
BERAHA	BELLA	CAROLINA
BERAHA	JANETTE	
BERSON	SIDONIE	LIZA
BESEN	JOAN	LORI
BLIER	MARVIN	
BODDEN	BARRY	JAY
BOESCH	MICHAEL	RUDOLF
BOHAN	CHRISTOPHER	THOMAS
BOLDRY	ISABELLA	MARIA
BOLDRY	JAMES	PATRICK
BOSTON	CHERYL	BANDOLON
BOUCHAL	HEIDI	ANNA
BOURQUIN	DOROTHY	LOOMIS
BRADLEY	JASON	PAUL
BREITENBERGER	KEVIN	SAMUEL
BROWN	PATRICK	EUGENE
BURCKHARDT	SIMONE	FRANCOISE RENEE
BURNS	BRENDAN	ROBERT
BUTT	ROBERT	CRAIG
CAIRNS	JILL	LARRAINE‘
CALABRESE	JEFFREY	ALAN
CALE	JANE	ELIZABETH
CAMPBELL	ALISON	MAC LEAN
CANTATORE	ANTHONY	JOSEPH
CAPREZ	FELIX	
CARIGIET	DANIEL	EDWARD SCHWARZ
CARR–HARRIS	MADELINE	MARGUERITE
CARROLL	CHRISTOPHER	ROBERT
CASTINO	ANTHONY	ALBERT
CECIL	LEONARD	JAY
CHALIFOUR	JOSHUA	ERIC
CHAN	BENNY	KIN KEUNG
CHAN	CECIL	TAT CHEONG

Last name	First name	Middle name/initials
CHAN	CHRISTINE	WAI-YIN
CHAN	SOPHIA	SAU-FONG
CHAN	TERESA	
CHANDARIA	JAI	NAVINCHANDRA
CHANG	LISA	MEE YUN
CHAPMAN	PAUL	FREDERICK JAMES
CHASSOT	YOANN	YVES EMILE
CHATILA	SAMI	WALID
CHEN	JOHNNY	
CHEUNG	ANTONY	HOI KIT
CHIDAMBARAM	RAVI	
CHILLAK	ALEXANDER	CONNELL
CHIN	SUNG	SUP
CHIU	JENNIFER	WENDY
CHOE	SUNG	JAY
CHOI	HYUN	JIN
CHU	WALTER	
CIPRIANO	KATHY	ANN
CLARK	BARRY	NEWTON
CLARKE	ROBERT	
CLOSE	DIANE	FREDERIQUE
COHEN	LESLIE	
CORNELL	LAURA	MARIA
CORNISH	NATALIE	ROSLYN
CRAMER	SHIRLEY	CHRISTINE
CROSS	DANIELLE	ANN
CROXFORD	RUTH	
CRYDERMAN	TERRI	ALAYNE
CUNNINGHAM III	JOHN	ANDREW
CURRAT–SCHLEGEL	VIRGINIA	E
DABBAH	ALBERT	ABRAHAM
DALE	ROSEMARY	ELIZABETH
DANISCH	CHARLOTTE	ROSE
DASWANI	DINISHA	DEEPAK
DAVIS	JOHN	ALAN
DAVOCK	PAUL	WHITING
DE BETHMANN	ELEONORE	VERONIQUE
DE CASTILLERO	ANNA	LISA SIMONS
DE LA VALETTE	MICHEL	PARISOT
DE LANDA	ALFONSO	BEAUMONT
DE MORARI	MICHAEL	FRANZ NOBILE
DE POIX	TIMOTHEE	ANATOLE
DE REUS	DARYL	CORNELIS
DE SAINT PIERRE	EDOUARD	A.M. DE MEHERENC
DE SIMONS	MARILYN	EDWINA
DEPEW	MARK	ANDREW
DIMENSTEIN	CAROLYNE	ANNE
DINSLEY	PATRICIA	BEATA
DIONNE	GERALYNE	BERNADETTE
DISSINGER	WALTER	HERBERT
DOIRON	DENISE	
DONALDSON	ROBERT	WILLIAM
DOYLE	JOHN	GERARD
DREGER	TRUDY	CHARLOTTE ATRENS
DUCEY	KATHERINE	ELIZABETH
EGLINGTON	THOR	
EKHOLM	IAN	JACK
EL FITURI	MARY	CECILIA RITA
EL HADJ	MARGARET	MARY
EL HADJ	SARAH	JANE
ELDER	ADRIENNE	E
ELWES	CLARE	HANNON
ENEBERG	MICHAEL	
ERVINE	CHRISTINE	JEAN
EVANS	JONATHON	EDWARD
FALK	ARTHUR	OSORIO FERRAZ
FALK	JOSE	LUIZ FERRAZ
FALK	VALENTINA	FERRAZ
FEUSI-SPOENDLIN	CATHERINE	ANNE
FILHO	ROBERTO	MAX HERMANN
FLINTOFT	JAMES	ANTHONY
FOLLIET	LIN	WANG
FONG	GREGORY	
FORD-JEBSEN	DANIEL	P

Last name	First name	Middle name/initials
FORDSCHMID	LIVIUS	
FOUGNER	ERIK	SIGURD
FRERKS	CLAUDIA	
FRIEDLANDER	ROBERT	MAX
FRIESEN	KATHLEEN	ELLEN
FUKUNAGA	MIWA	
FULLER	NICHOLAS	ALAN
FULLER	NICHOLAS	LAWRENCE
FULLER	ROBERT	STEVENS
FURRER	DONNA	DEE
GEIGER	KURT	BEREN
GEWELBE	MICHELE	MELISSA
GILBORSON	MARY	TATE
GILLAM	DIANA	ECHLIN
GOLDSTEIN	DANIEL	MOSHE
GORDON	ASHELY	J
GORDON	GLENN	LEWIS
GOTTRON	ANTHONY	KU YU XIANG
GOTTSCHALK JR	JOHN	WOLFE
GRAHAM	SHARON	JEAN
GRAMOLINI	GLENN	RICHARD
GRANDI	VITTORIO	MARCO
GRANLUND	LAURIE	KAY
GRAY	JOHN	BRADLEY
GREINER	OTTO	HERMANN
GRIEDER	SAMUEL	
GRIFFITHS	CHRISTOPHER	JOHN
GROELLER	ENRICA	CARLOTTA
HAJJAR	SOUHEIL	JEAN
HALL	HAPPY	MACNAIR
HANDEL	LEE	
HARDACRE	LAURA	JANICE
HAROUCHE	MICHEL	SALOMON
HARRINGTON	JULIE	PFEIFFER
HARTMANN	MICHAEL	ISAAC
HARWELL	JOHN	CECIL
HAYDEN	DANIEL	MARKUS
HEIDRICH	ERNA	ELIZABETH
HEINRICH	LARRY	ELMER
HERMANS	REGINA	HELMS
HESSER	NADJA	LYNN
HIFLER	MATTHIAS	ROLAND
HILAL	FRANCINE	SALOME
HILAL	HENRI	SAMI
HILBER	ROSEMARIE	KLARA
HILTON	BEVERLY	DALLEN
HIROTA	RIKAKO	
HITTLER	CHRISHANTHI	KURUPPU
HO	KENT	CHING-TAK
HO	MICHELLE	CHUI PENG
HO	WEI	LUN ALIKA
HOEHN	THOMAS	ALFRED
HOFFMANN	GEORGE	ALBERT ALLEN
HOFTON	DAVID	CHARLES
HOLBORN	CYNTHIA	MARIE
HOLLAND	WILLIAM	JOSEPH
HOMBERGER	CHARLES	MICHAEL
HOMSANY	AMALIA	AMY
HONEGGER	HEINRICH	DAVID
HONG	HEI–WEON	
HOOD	JAMES	ALEXANDER STUART TATE
HOOGE	CHRISTINE	FRANCES
HOSOE	MEGURU	
HOU	JASON	
HOWARD	ALICIA	MICHELLE
HUDSWELL	AARON	JOHN
HUI	GLENN	KWOK HUNG
HUNTER	CHRISTIAN	MANSFIELD
HUSZAR	DANGUOLE	MARIA
INOUE	SHINJI	
ISHERWOOD	STEPHANIE	JANE
IZUMI	EIJIRO	
JAMES	DOROTHY	J
JEBSEN	ALEXANDRA	NINI FORD

Last name	First name	Middle name/initials
JENNISON	TERRI	LYNN
JEOUNG	MYOUNG	SU
JOHNS	JOSEPH	FRANCIS
JONES	HENRY	LEE
JORDAN	DAVID	MAYNARD
JOSHI	DEVANAND	PHILLIP D
JOWITT	ALICE	VICTORIA
JU	TINA	LIN CHI
KALLIO	MICHELE	FRANCES
KANAAN	GEORGES	ELIAS
KATSIKAKIS	DESPINA	
KAWASHIMA	NANAMI	
KELLER	PHILIP	STEPHEN
KELLER	TOBIAS	PETER
KEUNG	JANICE	YUN YEE
KIM	DAN	NAMHYUNG
KIM	JOHN	HOON
KIM	JOONGI	
KIM	KYUNG	KEUN
KIM	YOUNG	KEUN
KINDSCHI	NADIA	
KING	KATHERINE	CLARE CONSTANCE
KING	WILLIAM	
KIRCHHOFF	TILMAN	LEANDER
KISSMANN	EDNA	
KLAWITTER	KLAUS	MICHAEL
KLEIN	WENDY	TARLETON
KLOSTER	STEPHEN	CLAIR
KNAPP	WERNER	HEINZ
KNOTT	MURDOCH	NAIRN DIMSDALE
KOCH	REMY	
KOENZ	JON	CHRISTIAN
KOERNER	SIGRID	ANNA GUNHILD
KOHLER	ALF	
KOLT	ANDREAS	ERNST DIETER
KOMOR	JOHN	GEORGE
KONDO	YASUO	MICHAEL
KOO	REGINA	LI KWAN
KOOK	ERICA	MINJUNG
KOPPER	ENID	F.
KOTHE	DANIELLE	LEIGH
KOTHE	KEITH	ROBERT
KOTHE	SHERRY	ANN
KOURNIOTIS	EVDOKIA	JOANNE
KRASTEL-NICHOLS	HELGA	IRMA
KREISELMEYER	MARTHA	MARIA
KRUSELL	PETER	KARL
KUBLIN	JOYCE	ARLENE
KUSTER	JANINE	LYNN
KWAN	MICHAEL	
KWON	SUE	JA
KYRES	FLORENCE	JAIME
LADNER	DANIELLE	MICHELLE GAUTHEY
LAESSER-AUGSBUGGER	STEPHANIE	CATHARINA
LAM	WOON	LING MARY
LARSEN	CHRISTEN	NIELS REED
LAVISH III	EDWARD	CHARLES
LAWRIE	KAREN	VICTORIA
LAWTON	MICHAEL	HARLEY
LEBENS	TIMOTHY	DENNIS FREDERICK
LEE	EUGENE	
LEE	ISABEL	JUDITH
LEE	JAMES	SHING HIN
LEE	JUNWOO	
LEE	KAR	HO
LEE	KAR	WAI
LEE	MAN	CHIU
LEE	PAO-CHU	
LEE	SHU	YIN
LEE	SUSIE	YUN
LEE	VIOLET	WAI-SHEUNG
LEE	WOO	SONG
LEMASS	RORY	DONAGH
LENDENMANN	LARA	MARGARET

Last name	First name	Middle name/initials
LEODOLTER-ETTER	GABRIELLA	MONICA
LEUNG	CLAIRE	HUII YIN
LEUNG	ERIC	CHI KONG
LEUNG	SUE–ANNE	TEAN
LEWINTON	PETER	CHARLES
LI	GABRIEL	
LI	MUHENG	
LIANG	MELISSA	SHIH YEE
LIAO	YI	JIE
LIEU	KETTY	CHIA ROO
LIGHTBOURE	MARTHA	RACHEL
LIM	YOUNG	GI
LIN	VINCENT	MING SHENG
LINDENER	MARGO	
LINDSAY	FAY	ELIZABETH
LIU	FRANK	CHI-JEN
LIU	JEREMY	
LO	SANDRA	JEAN
LOEW	TANJA	JANINE
LOKOSCHEK	DIETER	
LOOK	CAROLYNN	LOUISE ALINA
LUKAC	MATE	
LUNDIN	AXEL	LUKAS
LUNDIN	JENNA	ALEXANDRA
LUNDY-MORTIMER	MITCHELL	JAMES DARIO
LUTZ	JANET	JOHNSON
LYNESS	CAROL	ANN GIANNOTTA
LYNESS	JEFFREY	GIANNOTTA
LYNESS	ROBERT	ARTHUR
MAC DONALD	JACQUELINE	ROSE
MAEDER	PETER	CHARLES
MAK	ALFRED	YUN–TIN
MARCHI	MARIA	ANGELA
MARSH	ANNE	NEILA
MARTIN	DORIS	YVONNE
MAYR	AMELI	JUTTA
MAZE	JACK	R
MC ARTHUR	SARAH	GRACE
MC COLLOR	DOUGLAS	CLAYTON
MC DOUGAL	ELLEN	
MC MINN	NEAL	JAMES
MCPHERSON	CINDY	CRAWFORD
MECHLER-KETCHEDJIAN	JACQUELINE	ISABELLE
MEIER	ANDREA	NICOLE VETTER
MEIREN	ROELAND	M A VANDER
MELO	CARL	GUSTAF EMIL SIMONS
MERCIER	LORI	ANN
MIESENBOECK	GERO	ANDREAS
MILLAR	DAVID	ALEXANDER
MILLER	DANIEL	OWEN
MINDELL	ROBIN	KNIGHT
MINEA	CRAIG	JEFFERY
MIRKOVITCH	JOVANKA	
MIRO	LUCIANA	MARIA
MISSICK	AKIERRA	MARY DEANNE
MITCHEL	SCOTT	ALAN
MIYAZAKI	YUKA	THERESA
MOCK	DAVID	LAWRENCE
MOK	BENJAMIN	SIU YAU
MOLTZ	DAVID	FRANK
MOORE	JOHN	DOUGLAS
MORICONI-HAAS	MARIA	ANTONIETTA
MORLEY	SARAH	MARION
MORRISON	ROBERT	HARRY
MOSER	CHRISTINE	CLAIRE
MOSS	PARKER	DAVID
MUI	NATHANIEL	HIN TSUN
MULLIN	DANIEL	FRANCIS
MUNGER DE VRIES	DENISE	HELEN
MURPHY	JAMES	RICHARD
MUSTER JR	VASILIJE	DUSAN
NAIMI	RAMI	KHALIL
NAIRAC	JANE	F M
NAM	EDWARD	

Last name	First name	Middle name/initials
NASSBERG	BARRY	DAVID
NELSON	BRANDON	ALVIN
NEWHOUSE	MEGAN	MIREILLE
NEWMAN	SILVIA	FABIANI
NG	JASON	ZHONGYU
NGUY	JOO	TIAN
NIELSEN	ROBERT	BOLLINGER
NIGG	THOMAS	JAMES
OLSEN	ARNE	
ONG	EILEEN	TERESA
ORAN	MARSHALL	CHANNING
ORBAN	AURELIA	FLORENCE
O'ROURKE	SHAWN	FRANCIS
OSTWALD	ADAM	HENRY
OZBURN	MATTHEW	ROBERT
PALMER	HENRY	JOCELYN
PALMER	ISABELLA	SPRING
PANG	FUSHING	
PANG	LEMING	CHANG
PAPOYANS	EDWIN	
PARK	EUN	SOOK
PARK	JEONG	HUN
PARK	SEUNG	KWAN
PARK	SUZANNE	HAN
PARKER	ROBERT	BURNS
PARKER	SHAWN	DAVID
PARSER	JESSICA	ANN
PATTEE	SHARON	JILL
PATTEN	DANIEL	CLENDENIN
PEARSON	JOYCE	ARLENE
PEIL	MICHAEL	NELSON
PEREZ-BALLADARES	MARIO	ERNESTO
PETER	HENRY	MARTIN
PFLUGER	SARINA	PETRA
PHILPOTT	ALISON	JULIE
PIETERSE	AIMO	WILLEM
POPE	CHARLES	ALBERT
POYSTI	NATHANAEL	NICOLAI
PRICE	MARK	ROBIN
PRIESTLE JR	JOHN	PETER
PRINS	VINCENT	RIENTS
PROTT	CINDY	DIANE
RACE	SUZANNE	MARIE
RAPPO	VINCENT	LUCIEN JOSEPH
RATNAM	JACINTA	
REDMON	JENNIFER	ELIZABETH
RENOLD	WALTER	
REUSSER	CHRISTOPH	MATTHIAS
RHEE	TAEHWAN	JOHN
RHODES	ANITA	JEANNE
RHODES	CHARLES	SCHUMANN
RIADY	STEPHANIE	
RICHARDSON	VERA	
RIEDER	KURT	ERNST
RIGGS	JENNY	LOUISE LEIBUNDGUT
RIMELL	ALISON	JANE
RIVERA	MARCEL	RICHARD
ROBERTSON	SUMMER	
RODRIGUEZ	JOSEPH	BRUCE
ROGERS	ERIC	COY
ROGERS	HUNTER	WESLEY
ROGERS	PAUL	BRIAN
ROHNER-SALVAJ	BRIGITTE	ANNE ORIANNE
ROODNICK	GWENETH	MICHELLE
ROOT	ANTONY	HOWARD
ROSSITER	JENNIFER	LEE
ROULSTONE	SHARON	ELAINE
RUBIN	JOHN	CHESTER
RUBIN	PATRICIA	BELL
SANTOMENNO	JOSEPH	DAVID
SAREWITZ	ELLEN	
SATO	NAOKO	
SCHAEPPER-USTER	JENNIFER	ANDREA
SCHMED	PATRICK	PETER HUGO

Last name	First name	Middle name/initials
SCHMITT-RHADEN	MATTHIAS	
SCHNEIDER	MARK	RICHARD
SCHNEITER	THOMAS	ARTHUR
SCHOPP	WAYNE	RUSSELL
SEGERBERG	MARIA	EVA
SELE	VERA	MARIA
SENG	MARIA	
SENN	LEA	ALEXANDRA
SENN	MARC	BENJAMIN
SENNETT	MICHEL	LAWRENCE
SERCK-HANSSEN	PETER	OVE
SHASHOUA	MARK	SAMUEL
SHERMAN	ROBERT	STEVEN
SHIMODA	RIYAKO	LILLIAN
SHIMODA	YOICHI	
SHIPLEY	ROBERT	ANTHONY
SIM	JEONG	SUN
SIMON	ANTHONY	NICHOLAS
SIMON	JULIE	ANN
SINN	JUSTINE	TUNG
SITTARO-HARTMANN	MONIKA	
SIU	JIEHOU	RUCHARD
SKEIBROK	AMA	LYNN
SMITH	BONITA	MARIE
SOH	JUN	SUB SUN
SOMMERER-OPPLIGER	BARBARA	BEATRICE
SONG	PIL	SEON
SPADE	KARENINA	SOPHIE
STAMENKOVIC	VLADIMIR	JASON
STARR	SUZANNE	HEDWIG
STARR JR	HAROLD	PAGE
STELTS	STEVEN	ROSS
STERN	NOAM	DAVID
STEWART	NANNETTE	ADELE
STEWART	RAY	TAISHO
STEWART	RICHARD	DAVANT
STIERLIN	SATULIA	VELAMAR
STIMPSON	ROBERT	THOMAS
STIMPSON	YVONNE	ELIZABETH
STRASSER	STEVEN	ZYGMUNT
STRAUMANN	NOAH	REMY
STREUTKER	ERIKA	THERESIA
SUH	HISOO	
SULLIVAN	GEORGIA	BERNICE
SULZER	ERIC	ALFRED
SULZER	FRANK	OLIVIER
SWEENEY	JOHN	KENNETH
SYMONETTE	ROLAND	CAMERON
SZARVAS	ROBERT	STEPHEN
SZEKELY	PETER	JAMES
TAN	YANQIANG	
TANAKA	RYO	
TANG	MARX	
THERN	EDINA	RITTER
THERN JR.	ROBERT	WILLIAM
TIEN	LAUREN	TSAK YEN
TOLOMEO	DIANE	
TOYER	DIANA	MARIA‘
TREMAINE	DONALD	GRAHAM
TSAI	MARGARET	MING-TSWN
TSAI	SHIANG	SHUN
TSE	MIFFIE	CHAU MAI
TUNG	LEIGH	MER
TURNBULL	CAROL	ANNE
TWIGGS	KENNETH	ROBERT
TWILLEY	MATTHEW	STEPHEN
UENO	ALFRED	TSUYOSHI
VALENTIN	ANTHONY	ST CLAIR
VAN BILDERBEEK	CONSTANTIJN	HUGO
VAN DUSEN	TIM	DAVID
VAN KAAM	JACOB	HENRICUS
VAN LOON	MENNO	JAAP
VAN RIJSBERGER	ALEXANDER	GREGORY
VANCE	MICHAEL	LEE

Last name	First name	Middle name/initials
VANCE	VICTOR	MORTON
VEGETTI	HELGA	MARGARETHA
VILLANUEVA	CARLOS	J MORALES
VOLKER	CRAIG	ALAN
VON BAEYER	EDWINNA	LOUISE
VON RENNENKAMPFF	JULIA	
WALLACE	IVOR	MALCOLM BRYDEN
WANG	SEE	PING
WANG	WINNIE	
WATANABE	YOKO	
WATKINS	ROBERTO	EDUARDO HEALY
WEBB	LYNETTE	RUTH
WEERASINGHE	ANISA	
WEIDMANN	ERIC	CHARLES
WEINBERG	CHRISTOPHER	ALLEN
WEINBERG	LEEGENA	GAIL
WEISS	ANDREW	CARL
WELLESLEY	GERALD	GRANT
WELLS	DAVID	WINTEMUTE
WHITE	CAROLE	BONNIE
WHITE	MARC	THOMAS
WILCOXON JR	HARDY	CULVER
WILLER	BENJAMIN	
WILLER	REBECCA	LYNN
WILLIAMS	CHARLES	MICHAEL
WILSON	TIMOTHY	MICHAEL DOBREE
WOLFE	DANIEL	RICHARD
WOLFE	VICTORIA	RACHEL
WOLFENDEN	ANTHONY	
WOLFENDEN	MEGAN	LISA
WOLFSON	MICHAEL	CRAIG
WONG	ANTHONY	WAY-CHOY
WONG	APRIL	MAY SUM
WONG	MEI-YU	ESTHER
WONG	WEI	
WOO	NANCY	WAI-FUN
WOODS	CARLA	JEANNE
WRIGHT	RICHARD	FREDERIC
WUTSCHERT	CLAUDIA	MARGARET
WYSS	CHRISTINE	ANNA KATHARINA
YANG	SEUNGMEE	CHRISTINE
YI	SANG	UK
YOO	CHUI	KYU
YOSHIZAWA	TAKAHITO	
YOUNG	CAROLINE	ALICE
YOUNG	SHERIDAN	LEE
YOUNG–HERRIES	JULIA	DOBREE
YU	DANIEL	TING YAO
ZAUGG	THOMAS	
ZEITNER	LUKAS	JOHANNES
ZIEGLER	SYLVIA	EILEEN
ZIMMERLI	BARBARA	ANNA
ZWICKY	MARGRIT	

Dated: October 29, 2013.

Dorothy A. Harbison,

Manager, Team 103, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2013–27072 Filed 11–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee; Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee November 22, 2013, Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for November 22, 2013.

Date: November 22, 2013.

Time: 10:00 a.m. to 4:30 p.m.

Location: Conference Room A, United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review and discussion of candidate designs for the 2014 American Eagle Platinum Coin Program and the 2014 First Spouse Gold Coin and Bronze Medal Program; and review and discussion of themes for the 2015 March of Dimes Commemorative Coin Program and for the 2015 and 2016 First Spouse Gold Coin and Bronze Medal Programs. In addition, the CCAC will

review and discuss its FY2013 Annual Report.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: November 6, 2013.

Beverly Ortega Babers,

Chief Administrative Officer, United States Mint.

[FR Doc. 2013–27181 Filed 11–12–13; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 98

Greenhouse Gas Reporting Program: Final Amendments and Confidentiality Determinations for Electronics Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0028; FRL–9845–6]

RIN 2060–AR61

Greenhouse Gas Reporting Program: Final Amendments and Confidentiality Determinations for Electronics Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of Final Action on Reconsideration.

SUMMARY: The EPA is amending the calculation and monitoring methodologies for electronics manufacturers covered by the Greenhouse Gas Reporting Rule. These changes include revising certain calculation methods and adding a new method, amending data reporting requirements, and clarifying terms and definitions. The EPA is also making confidentiality determinations for new and revised data elements pertaining to electronics manufacturing. This rule also finalizes amendments to the general provisions of the Greenhouse Gas Reporting Rule to remove entries for data elements that are being moved from reporting to recordkeeping.

DATES: This final rule is effective on January 1, 2014. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of January 1, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0028. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReportingRule@epa.gov*. For technical information and implementation materials, please go to the Greenhouse Gas Reporting Rule Program Web site at *http://www.epa.gov/ghgreporting/*. To submit a question, select Rule Help Center, followed by ''Contact Us.''

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on the EPA's Greenhouse Gas Reporting Program Web site at *http://www.epa.gov/ghgreporting/*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). These amended regulations may affect owners or operators of certain electronic manufacturing facilities. Regulated categories and entities may include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Source category	NAICS	Examples of affected facilities
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	Liquid Crystal Display (LCD) unit screens manufacturing facilities.
	334419	Micro-electro-mechanical systems (MEMS) manufacturing facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Table 1 of this preamble lists the types of facilities of which the EPA is aware may be potentially affected by the reporting requirements. Other types of facilities not listed in the table may also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A and 40 CFR part 98, subpart I. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by January 13, 2014. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW. Washington, DC 20004. Note that under CAA section 307(b)(2), the requirements established

by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

ASME American Society of Mechanical Engineers
ASTM American Society of Testing and Materials
BAMM best available monitoring methods
CAA Clean Air Act
CBI confidential business information
CFR Code of Federal Regulations
CO_2 carbon dioxide
CO_2e carbon dioxide equivalent
CVD chemical vapor deposition
DRE destruction or removal efficiency
EIA Economic Impact Analysis
EPA U.S. Environmental Protection Agency
FDL field detection limit
F–GHG fluorinated greenhouse gas
FR Federal Register
FTIR Fourier transform infrared
GHG greenhouse gas
GHGRP Greenhouse gas reporting period
GWP global warming potential
HQ Headquarters
HTF heat transfer fluid
IBM International Business Machines Corporation
IPCC Intergovernmental Panel on Climate Change
ISMI International SEMATECH Manufacturing Initiative
kg kilograms
LCD liquid crystal display
MACT Maximum Achievable Control Technology
MEMS micro-electro-mechanical systems
$mtCO_2e$ metric ton carbon dioxide equivalent
N_2O nitrous oxide
NAICS North American Industrial Classification System
NF_3 nitrogen trifluoride
NTTAA National Technology Transfer and Advancement Act of 1995
OMB Office of Management & Budget
POU point of use
ppbv parts per billion by volume
ppm parts per million
PV photovoltaic
QA/QC quality assurance/quality control
QMS quadrupole mass spectroscopy
R&D research and development
RFA Regulatory Flexibility Act
RICE Reciprocating Internal Combustion Engines
RIN Regulatory Information Number
RSASTP random sampling abatement system testing program
RSD relative standard deviation
SEMATECH Semiconductor Manufacturing Technology
SIA Semiconductor Industry Association
TI Texas Instruments Incorporated
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
VCS voluntary consensus standard
VOC volatile organic compound
WWW Worldwide Web

I. General Information

A. Organization of This Preamble

The following outline is provided to aid in locating information in this preamble.

I. General Information
A. Organization of this Preamble
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C. Legal Authority
D. How do these amendments apply to 2013 and 2014 reports?
II. Overview of Final Amendments to the Electronics Manufacturing Source Category and Responses to Major Public Comments
A. Final Amendments to the Electronics Manufacturing Source Category
B. Responses to Major Comments Submitted on the Electronics Manufacturing Source Category
III. Confidentiality Determinations for New and Revised Subpart I Data Elements and Responses to Public Comments
A. Final Confidentiality Determinations for New and Revised Subpart I Data Elements
B. Public Comments on the Proposed Confidentiality Determinations
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

B. Background

The GHG reporting requirements for subpart I were finalized on December 1, 2010 (75 FR 74774, hereafter referred to as ''final subpart I rule''). Following the publication of the final subpart I rule in the **Federal Register**, the Semiconductor Industry Association (hereafter referred to as the ''SIA'' or ''the Petitioner'') submitted on January 31, 2011 an administrative petition titled ''Petition for Reconsideration and Request for Stay Pending Reconsideration of Subpart I of the Final Rule for Mandatory Reporting of Greenhouse Gases'' (hereafter referred to as the ''Petition for Reconsideration,'' available in docket EPA–HQ–OAR–2009–0927), requesting reconsideration of numerous provisions in the final subpart I rule. Since that petition was filed, the EPA has published five actions related to subpart I.

- Additional Sources of Fluorinated GHGs: Extension of Best Available Monitoring Provisions for Electronics Manufacturing (76 FR 36339, published June 22, 2011). Granted the Petition for Reconsideration with respect to the provisions for the use of Best Available Monitoring Methods (BAMM). Extended three of the deadlines in subpart I related to using the BAMM provisions from June 30, 2011 to September 30, 2011.
- Changes to Provisions for Electronics Manufacturing to Provide Flexibility (76 FR 59542, published September 27, 2011). Amended the calculation and monitoring provisions for the largest semiconductor manufacturing facilities to provide flexibility through the end of 2013 and extended two deadlines in the BAMM provisions.
- Proposed Confidentiality Determinations for Subpart I and Proposed Amendments to Subpart I Best Available Monitoring Methods Provisions (77 FR 10434, published February 22, 2012). Re-proposed confidentiality determinations for data elements in subpart I and proposed amendments to the provisions regarding the calculation and reporting of emissions from facilities that use BAMM.
- Revisions to Heat Transfer Fluid Provisions (77 FR 10373, published February 22, 2012). Amended the definition of fluorinated heat transfer fluids (fluorinated HTFs) and the provisions to estimate and report emissions from fluorinated HTFs.
- Final Confidentiality Determinations for Nine Subparts and Amendments to Subparts A and I under the Mandatory Reporting of Greenhouse Gases Rule; Final Rule (77 FR 48072, published August 13, 2012). Final confidentiality determinations for data elements in subpart I and final amendments to the provisions regarding the calculation and reporting of emissions from facilities that use BAMM.

In response to the Petition for Reconsideration, the EPA published a proposal to amend provisions in subpart I related to calculation and monitoring methodologies, data reporting and recordkeeping requirements, clarifying terms and definitions, and confidentiality determinations to provide greater flexibility to facilities. The proposal was published on October 16, 2012 (77 FR 63538). The public

comment period for the proposed rule amendments was initially scheduled to end on December 17, 2012. The EPA received a request to extend the public comment period and published a notice in the **Federal Register** on November 20, 2012 (77 FR 69585) extending the public comment period to January 16, 2013.

In this action, the EPA is finalizing amendments to provisions in the final subpart I that were proposed in the October 16, 2012 notice. Responses to comments submitted on the proposed amendments can be found in Sections II.B and III.B of this preamble and the document, ''Greenhouse Gas Reporting Rule—Technical Revisions to the Electronics Manufacturing Category of the Greenhouse Gas Reporting Rule: EPA's Responses to Public Comments'' (see Docket Id. No. EPA–HQ–OAR–2011–0028).

C. Legal Authority

The EPA is promulgating these rule amendments to Part 98 under its existing CAA authority, specifically authorities provided in CAA section 114.

As stated in the preamble to the 2009 final rule (74 FR 56260, October 30, 2009) and the Response to Comments on the Proposed Rule, Volume 9, Legal Issues, CAA section 114 provides the EPA broad authority to obtain the information in Part 98, including subpart I, because such data would inform and are relevant to the EPA's carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial Part 98 proposal (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA.

In addition, the EPA has made confidentiality determinations for subpart I data elements that are added or revised by this rule under its authorities provided in sections 114, 301, and 307 of the CAA. As mentioned in the previous paragraph, CAA section 114 provides the EPA authority to obtain the information in Part 98, including those in subpart I. Section 114(c) requires that the EPA make publicly available information obtained under section 114 except for information (excluding emission data) that qualifies for confidential treatment.

The Administrator has determined that this action (finalized amendments and confidentiality determinations) is subject to the provisions of section 307(d) of the CAA.

D. How do these amendments apply to 2013 and 2014 reports?

These final amendments are effective on January 1, 2014. Facilities are required to follow one of the methods in subpart I as amended through this action to estimate emissions beginning in 2014. The first reports of emissions estimated using the new methods will be submitted in early 2015. As a result of these finalized amendments, the EPA does not expect reporters will need to purchase and install any new monitoring equipment to continue to comply with subpart I since reporters will still have the option to use default utilization and by-product formation rates. Additionally, unless reporters choose to estimate F–GHG emissions using the optional stack test method, the EPA does not expect reporters will be required to make any substantial modifications to their recordkeeping procedures. For the reasons discussed here, in addition to the absence of any opposition to the timeline received during the public comment period, the EPA believes that the effective date of January 1, 2014 is reasonable.

For the reports of emissions in calendar year 2013 (reporting year 2013) that are to be submitted in early 2014, reporters must calculate emissions and other relevant data using the requirements under Part 98 that predated today's revisions. Those requirements include the flexibility for the largest semiconductor manufacturing facilities added in the September 27, 2011 rule titled ''Changes to Provisions for Electronics Manufacturing to Provide Flexibility.''

II. Overview of Final Amendments to the Electronics Manufacturing Source Category and Responses to Major Public Comments

The EPA is finalizing amendments to the calculation and monitoring methodologies in the final subpart I rule. In addition, the EPA is finalizing conforming changes to the reporting and recordkeeping requirements of subpart I. Changes include revising certain calculation methods and adding a new method, amending data reporting requirements, and clarifying terms and definitions. The EPA is finalizing these amendments to (1) Modify calculation methods and data requirements to better reflect new industry data and current practice; (2) provide additional calculation methods to allow individual facilities to choose the method best suited for their operations; (3) reduce the burden associated with existing requirements; and (4) address potential disclosure concerns raised by members of the SIA. Amendments being finalized today affect all facilities subject to subpart I that manufacture electronics including those that manufacture semiconductors (including light emitting diodes), micro-electro-mechanical systems (MEMS), liquid crystal displays (LCDs), or photovoltaic (PV) cells. Because the effective date of these final amendments is January 1, 2014, those provisions that apply to reporting year 2013, but not thereafter, will no longer appear in the text of the regulation.

Section II.A describes the final amendments to the subpart I rule, including a detailed summary of the changes in the final amendments since proposal. Section II.B, Response to Major Comments Submitted on the Electronics Manufacturing Source Category, discusses the EPA's responses to major comments on the proposed amendments. For a full description of the rationale for these and any other amendments to the final subpart I rule, please refer to the ''Greenhouse Gas Reporting Rule—Revisions to the Electronics Manufacturing Category of the Greenhouse Gas Reporting Rule: EPA's Response to Public Comment'' in addition to Sections II.A and II.B of this preamble.

A. Final Amendments to the Electronics Manufacturing Source Category

In this rulemaking, the EPA is taking final action on its proposed reconsideration on all issues in the Petition for Reconsideration not already addressed in the final rules published June 22, 2011 (Additional Sources of Fluorinated GHGs: Extension of Best Available Monitoring Provisions for Electronics Manufacturing); September 27, 2011 (Changes to Provisions for Electronics Manufacturing to Provide Flexibility); and August 13, 2012 (Confidentiality Determinations for Subpart I and Amendments to Subpart I Best Available Monitoring Methods Provisions). Those final rules are described in Section I.B of this preamble. Section II.A discusses the final amendments to the subpart I rule in response to the petition. The EPA is completing its response to the Petition for Reconsideration through this rulemaking.

The major changes to the final rule since proposal are the following:

Default Emission Factors:

• Etch emission factors: The proposed etch emission factors and by-product

formation rates for semiconductor manufacturing have been updated since proposal to account for new data submitted in public comments.

• Nitrous oxide (N_2O) emission factors: The proposed revised emission factor for all ''other'' (e.g., non-CVD) N_2O emitting processes is not being adopted in the final rule.

Abatement System Requirements:

• The proposed default abatement system destruction or removal efficiency (DRE) factors have been updated since proposal to account for new data submitted in public comments and for a revised statistical approach to calculating the default DRE factors.

• The certification requirements for abatement systems have been revised to refer to the site maintenance plan for abatement systems.

• The abatement system requirements have been revised to allow the use of either default DREs or site-specific measured DRE values; however, if an abatement system was not specifically designed for F–GHG removal and the reporter elects to account for the effect of that abatement system when using either the emission factors and calculation methods in 40 CFR 98.93(a) and (b) or the stack testing alternative in 40 CFR 98.93(i), site-specific DRE values must be used.

• The calculation of abatement system uptime has been revised so that only a single equation is used to calculate uptime for both input gases and their associated by-product gases for a given input gas and process combination.

Stack Testing Alternative:

• The rule designates a list of five ''expected'' by-product gases (CF_4, CHF_3, CH_3F, C_2F_6, and CH_2F_2) and four ''possible'' by-product gases (C_3F_8, C_4F_6, c-C_4F_8, and C_5F_8) that must be measured in stack testing. These two lists replace the proposed requirement to perform an analysis to identify potential by-products to include in testing. The proposed analysis would have considered for testing the by-products from the applicable gas and process combinations in Tables I–3 to I–7 of subpart I.

• The maximum allowed field detection limits (FDLs) have been increased by a factor of four compared to the proposed FDLs.

• The final rule allows the use of ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, as an alternative to EPA Method 320.

• The Tier 2a emission factors on Tables I–11 and I–12 for semiconductors have been updated since proposal to account for new data submitted in public comments, and to include weighting by the amount of gas used in each process type (as opposed to not being weighted).

Facility-Wide DRE Calculation:

• Equations I–26, I–27, and I–28 have been revised to calculate only a fab-wide DRE, not a facility-wide DRE, when more than one fab is present.

The following sections of this preamble summarize the final amendments to subpart I.

1. Stack Testing as an Alternative Emission Monitoring Method for Facilities That Manufacture Electronics

The EPA is promulgating amendments to revise subpart I to include a stack testing option for estimating annual F–GHG emissions at 40 CFR 98.93(i). This option applies to all electronic manufacturing facilities, including those making semiconductors, MEMS, LCDs, and PV cells. The stack testing option is not available for estimating N_2O emissions. The finalized amendments to the provisions and emission factors for estimating N_2O emissions are discussed in Section II.A.9 of this preamble.

In this action, we are also finalizing the option to allow all electronics manufacturing facilities to use separate methods (i.e., stack testing or default utilization and by-product formation rates) to estimate emissions from each fab within a single facility. (A facility must use only a single method for each fab.) Additionally, we are also finalizing the requirements for facilities to report GHG emissions on a fab basis but submit reports on a ''facility'' basis, as defined in 40 CFR 98.6. There may be one or more fabs at each facility. A ''fab'' is defined in subpart I as ''the portion of an electronics manufacturing facility located in a separate physical structure that began manufacturing on a certain date.''

Selection of Stack Systems for Testing. Under the final amendments, reporters are required to develop a preliminary estimate of the annual emissions from each ''stack system'' in a fab and are not required to test those stack systems that account for relatively small emissions. A stack system is considered to be one or more stacks that are connected by a common header or manifold, through which a F–GHG-containing gas stream originating from one or more fab processes is, or has the potential to be, released to the atmosphere. For purposes of subpart I, stack systems do not include emergency vents or bypass stacks through which emissions are not usually vented under typical operating conditions.

The reporter must develop a preliminary estimate of F–GHG emissions from each stack system on a metric ton carbon dioxide equivalent ($mtCO_2e$) basis. To develop the preliminary estimate, the reporter must use the gas consumption in the tools associated with the stack system and gas utilization rates and by-product formation rates in Tables I–11 through I–15. Facilities must also include any intermittent low-use F–GHGs in the preliminary estimate. The reporter must also account for the DRE of the ''point of use'' (POU) abatement systems and the uptime of the POU systems (the fraction of time the system is operating within the parameters specified in the facility's site maintenance plan for abatement systems). The gas utilization rates and by-product formation rates in Tables I–13 and I–14 are based on the 2006 Intergovernmental Panel on Climate Change (IPCC) Tier 2a factors [1] for LCD and PV manufacturing, respectively. The factors in Table I–13 for MEMs manufacturing are based on the 2006 IPCC Tier 2a factors for semiconductor manufacturing due to the similarities in the manufacturing processes. The factors in Tables I–11 and I–12 for semiconductor manufacturing facilities were updated from the 2006 IPCC factors based on utilization rate and by-production formation rate data collected by the Petitioner (see ''Technical Support for Modifications to the Fluorinated Greenhouse Gas Emission Estimation Method Option for Semiconductor Facilities under Subpart I,'' Docket ID No. EPA–HQ–OAR–2011–0028) in addition to data submitted to the EPA during the comment period. The default factors for each gas in Tables I–11 and I–12 were also updated by weighting the emission factor data for each gas and process type or subtype based on the gas consumption for that process type or sub-type. The EPA did not update the factors in Tables I–13 through I–15 based on the data collected by the Petitioner or submitted during the comment period because none of the data were for LCD, PV, or MEMS manufacturing. The EPA did not receive additional data on LCD, PV, or MEMs manufacturing processes, therefore, it was not feasible to propose revised factors for these processes. Furthermore, because MEMS are generally

[1] 2006 IPCC Guidelines for National Greenhouse Gas Inventories, Prepared by the National Greenhouse Gas Inventories Programme, Eggleston H.S., Buendia L., Miwa K., Ngara T. and Tanabe K. (eds). Hayama, Kanagawa, Japan.

manufactured on older semiconductor manufacturing tools (i.e., 150 mm and 200 mm wafer sizes), we have determined that the 2006 IPCC factors for semiconductor manufacturers remain appropriate.

In the preliminary estimate, reporters are required to use data from the previous reporting year for the total uptime of all abatement systems in each stack system, and either a default DRE or measured site-specific DRE; the reporter must use the measured site-specific DRE if the abatement system was not specifically designed to abate F–GHG. If uptime data from the previous reporting year are not available (either because the fab is new or the facility was not required to report in the previous reporting year), the reporter must use representative operating data from a period of 30 days or more. The reporter must account for any anticipated change in activity for the fab (i.e., an increase or decrease in the annual consumption and emissions of any F–GHG) greater than 10 percent for the current reporting year compared to the previous reporting year. To estimate the expected change in activity, the reporter must use a quantifiable metric (e.g., the ratio of the number tools that are expected to be vented to the stack system in the current year as compared to the previous reporting year), engineering judgment, or other industry standard practice.

The consumption of each F–GHG in each stack system is estimated as the total gas consumption of that F–GHG in the fab, times the ratio of the number of tools using that F–GHG that are feeding to that stack system to the total number of tools in the fab using that F–GHG. The reporter must convert the F–GHG emissions to CO_2e using the global warming potential (GWP) values for F–GHGs in Table A–1 of subpart A of Part 98. For F–GHGs in Tables I–11 through I–15 for which Table A–1 of subpart A of Part 98 does not list a GWP value, reporters must use a default value of 2,000 for the GWP for the purposes of this estimate. Based on this preliminary estimate, the reporter must rank the F–GHG emitting stack systems at the facility from the lowest to highest emitting. The reporter is not required to test emissions from low-emitting stack systems if those F–GHG emitting stack systems meet all of the following three criteria:

(1) The sum of the F–GHG emissions from all combined stack systems in the fab that are not tested is less than 10,000 $mtCO_2e$ per year;

(2) Each of the stack systems that are not tested are within the fab's lowest F–GHG emitting stack systems that together emit 15 percent or less of total CO_2e F–GHG emissions from the fab; and

(3) The F–GHG emissions from each of the stack systems that are not tested can be attributed to only one particular collection of process tools during the test (i.e., the stack cannot be used as a bypass from other tools that are normally vented through a stack system that does not meet these criteria).

For those low-emitting stack systems that are not tested, the reported F–GHG emissions are calculated using the annual gas consumption in the tools vented to those stacks and the gas utilization rates and by-product formation rates in Tables I–11 through I–15 in subpart I, accounting for the DRE and uptime of the POU abatement systems, as discussed above.

Stack testing requirements. For those higher-emitting stack systems in each fab that are not exempt from measurement, the reporter must measure each F–GHG concentration (in parts per billion by volume, or ppbv) and the total stack flow to determine the hourly mass flow rate (kg/hr) of each F–GHG emitted from each applicable stack system. If a stack system has more than one stack from a common header, the reporter is required to measure F–GHG concentration and flow in each stack from that header. The reporter must use EPA Method 320, ASTM D6348–03 or another approved method to measure F–GHG concentration (per the requirements of 40 CFR 98.94(k)), and EPA Methods 1 through 4 at 40 CFR part 60, appendices A–1, A–2, and A–3 to measure other stack gas parameters needed to convert F–GHG concentration to mass emissions for the test period. Reporters must also measure the fab-specific consumption of each F–GHG for the test period.

Reporters are required to measure emissions for all F–GHGs used as input gases and any expected or possible by-product F–GHGs listed in Table I–17 to subpart I. Reporters are not required to measure emissions for any intermittent low-use F–GHGs. Intermittent low-use F–GHGs are defined as F–GHGs that meet all of the following:

(1) The F–GHG is used by the fab but was not used on the day of the actual stack testing;

(2) The emissions of that F–GHG do not constitute more than 5 percent of the total annual F–GHG emissions from the fab on a CO_2e basis;

(3) The sum of all F–GHGs that are considered intermittent low-use F–GHGs does not exceed 10,000 $mtCO_2e$ for that year; and

(4) The F–GHG is not an expected or possible by-product identified in Table I–17 of subpart I.

Reporters must calculate annual emissions of intermittent low-use F–GHGs using the gas consumption and the gas utilization rates and by-product formation rates in Tables I–11 through I–15 in the rule, accounting for the DRE and uptime of the POU systems during the year for which emissions are being estimated.

The testing period must be at least 8 hours for each stack, although reporters may choose to conduct testing over a longer period.

Reporters are not required to measure all stacks simultaneously, but reporters must certify that no significant changes in stack flow configuration occur during and in between tests conducted for any particular fab in a reporting year. Specifically, reporters must certify that no more than 10 percent of the total number of F–GHG emitting process tools have been connected or disconnected from the stack system during testing. Reporters must also certify that no process tools that were in operation at the start of the testing period were moved to a different stack system during testing and that no POU abatement systems have been permanently removed from service during the testing period. Reporters must document and keep records of any changes in the number of tools connected to or disconnected from the stack system and the uptime of each POU abatement system during the testing period for each system.

The tests must be conducted during a period in which the fab is operating at a representative operating level and with the POU abatement systems connected to the stack being tested operating with at least 90 percent average uptime during the 8-hour (or longer) period, or at no less than 90 percent of the uptime measured during the previous reporting year, averaged over all abatement systems connected to the stack being tested. The representative operating level is defined in subpart I as operating the fab, in terms of substrate starts for the period of testing, at no less than 50 percent of installed production capacity or no less than 70 percent of the average production rate for the reporting year, where production rate for the reporting year is represented in average monthly substrate starts. For the purposes of stack testing, the period for determining the representative operating level must be the 30-day period ending on the same date on which testing is concluded.

To convert the measured F–GHG emission rates into fab-specific emission

factors, the reporter must measure the consumption of each F–GHG used in the tools associated with the stack systems being tested, excluding gas consumption allocated to tools venting to low-emitting stack systems that are not tested. Consumption may be measured using gas flow meters, weigh scales, or pressure measurement equipment (with measurements corrected for temperature and non-ideal gas behavior). For gases with low volume consumption for which it is infeasible to measure consumption accurately over the 8-hour testing duration, short-term consumption may be estimated by using one or more of the following:

(1) Drawing from single gas containers in cases where gas is normally drawn from a series of containers supplying a manifold;

(2) Increasing the length of the test period to greater than 8 hours; or

(3) Calculating consumption from long-term consumption (e.g., monthly) that is pro-rated to the test duration.

Stack test methods. The EPA is finalizing the requirement that the F–GHG concentrations in stacks systems be measured using EPA Method 320. We are also allowing the use of ASTM D6348–03 as an alternative to EPA Method 320 with the following additional requirements: (1) The test plan preparation and implementation in the Annexes to ASTM D6348–03, Sections A1 through A8 are mandatory; and (2) In ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent recovery (%R) must be determined for each target analyte (Equation A5.5). The reporter must also follow Section 4.1 of ASTM D6348–03 to ensure the F–GHG remains in the gas phase. In order for the test data to be acceptable for a compound, the percent recovery must be between 70 and 130 percent. If the percent recovery does not meet this criterion for a target compound, the test data are not acceptable for that compound and the test must be repeated for that analyte (i.e., the sampling and/or analytical procedure should be adjusted before a retest). The percent recovery value for each compound must be reported in the test report, required under 40 CFR 98.94(j)(4), and all field measurements must be corrected with the calculated percent recovery value for that compound. The use of ASTM D6348–03 was added since proposal, as discussed in section II.B of this preamble.

F–GHGs not detected. We are also finalizing the following provisions to account for different scenarios in which a F–GHG is used, expected to be emitted as a by-product, or possibly emitted as a by-product, but may occur in concentrations that are below the FDL. The FDL of a by-product is the lowest concentration of the by-product that should be detectable through measurements, as defined in Method 320.

- If a F–GHG is consumed during testing, but emissions are not detected, the reporter must use one-half of the FDL for the concentration of that F–GHG in calculations.
- If a F–GHG is consumed during testing and detected intermittently during the test run, the reporter must use the measured concentration for the value of that F–GHG when available and use one-half of the FDL for the value when the F–GHG is not detected.
- If a F–GHG is not consumed during testing but is detected intermittently as a by-product gas, the reporter must use the measured concentration when available and use one-half of the FDL for the value when the F–GHG is not detected.
- If a F–GHG is an expected by-product as listed in Table I–17 to subpart I and is not detected during the test run, use one-half of the FDL for the value of that F–GHG.
- If a F–GHG is a possible by-product as listed in Table I–17 to subpart I and is not detected during the test run, then assume zero emissions for that F–GHG for the tested stack system.
- If a F–GHG is not used, and is not an expected or possible by-product of the stack system and is not detected, then assume zero emissions for that F–GHG for the tested stack system.

Under the stack testing option, reporters are required to achieve FDLs that are less than or equal to the maximum FDLs in Table I–10 of the regulatory textAlso since proposal, the maximum values for FDLs for stack testing have been increased by a factor of four. The rationale for these changes is discussed in Section II.B of this preamble.

Alternative stack test methods. We are finalizing the option for reporters to use an alternative stack test method (other than EPA Method 320 or ASTM D6348–03) to measure the concentration of each F–GHG in each stack provided that the method is validated using EPA Method 301 of 40 CFR part 63, appendix A (hereafter ''EPA Method 301''), and the EPA approves its use.

Under the promulgated approval process in 40 CFR 98.94(k), the reporter is required to notify the Administrator (or authorized representative) of the intent to use an alternative test method. The notification must include a test plan describing the alternative method and procedures, the range of test conditions over which the validation is intended to be applicable, and an alternative means of calculating the fab-level F–GHG emissions if the Administrator denies the use of the results of the alternative method. The reporter must validate the alternative method using EPA Method 301 and submit the results of the Method 301 validation process along with the notification of intention and a rationale for not using the specified method.

The Administrator will review and determine whether the validation of the proposed alternative method is adequate and issue an approval or disapproval of the alternative test plan within 120 days of the reporter submitting the notification and test plan. The reporter is required to respond to any of the Administrator's questions on the test plan before obtaining approval and to take into account the Administrator's comments on the test plan in conducting the test using the alternative method. The reporter must respond to the Administrator's questions or request for additional information on the plan during the 120-day review period and the Administrator's questions or request for additional information will not extend that review period. Therefore, it is the reporter's obligation to respond in a timely manner. If an alternative test plan is not approved within the 120-day period and the reporter still opts to use that method, a reporter must recommence the process to have an alternative test method approved starting with the notification of intent to use an alternative test method.

The reporter must report the results of stack testing using the alternative method and procedure specified in the approved test plan. The report must include all methods, calculations and data used to determine F–GHG emissions. The Administrator will review the results of the test using the alternative methods and procedure and then approve or deny the use of the results of the alternative test method and procedure no later than 120 days after they are submitted to the EPA. During this 120-day period, the reporter is required to respond to any of the Administrator's questions on the test report before obtaining approval of the final test results using the alternative method. If the Administrator finds reasonable grounds to dispute the results obtained by the alternative method, the Administrator may require the use of the method specified in subpart I instead of the alternative method.

Once the Administrator approves the use of the alternative method, that method may be used by any other facility for the same F–GHGs and types

of stack systems, if the approved conditions apply to that facility. In granting approval, the Administrator will limit the range of test conditions and emission characteristics for which that approval is granted and under which the alternative method may be used without seeking further approval. The Administrator will specify those limitations, if any, in the approval of the alternative method.

Accounting for Abatement System Downtime. To account for the effect of POU abatement system downtime in estimating emissions using the stack testing method, reporters must record the abatement system downtime in each fab during testing and for the entire reporting year. Using the downtime measured during testing, reporters are required to correct the measured emission factors to assume no abatement system downtime (i.e., 100 percent abatement system uptime). The downtime measured over the entire reporting year is then used to calculate the excess F–GHG emissions that occur as a result of abatement system downtime events.

The reporter is required to measure the amount of POU abatement system downtime (in minutes) during the emission tests for any tools that are vented to the stacks being tested. For example, if five POU abatement systems are down for times of 10, 15, 25, 30, and 40 minutes during an 8-hour test, the total POU system downtime would be 120 minutes, or 5.0 percent of the total possible abatement system and tool operating time for the five tools (2,400 minutes). Using these data and the average DRE for the POU abatement systems, the emission factor measured during the testing is adjusted to an emission factor representing POU abatement systems with 100 percent uptime (zero percent downtime). The DRE for the abatement systems may be a default DRE or a site-specific measured DRE; however, the reporter must use a site-specific measured DRE if the abatement system is not specifically designed for F–GHG abatement.

The downtime measured over the year is used to determine an average uptime factor that is an aggregate for all abatement systems in the fab, and calculated using Equation I–23 in subpart I. Abatement system downtime is considered any time during which the abatement system was not operating according to the site maintenance plan for abatement systems. The reporter must determine the sum of the downtime for all abatement systems during the year, and divide this sum by the sum of the possible annual operating time for each of the tools connected to those abatement systems in the fab to determine the downtime fraction. The downtime fraction is the decimal fraction of operating time that the abatement systems were not operating according to the site maintenance plan for abatement systems. The average uptime factor used in the emissions calculations is equal to 1 minus the downtime fraction.

The total possible annual tool operating time is calculated by assuming that tools that were installed for the whole of the reporting year were operated for the entire year. The total possible tool operating time is prorated to account for the days in which a tool was not installed; any partial day that a tool was installed is treated as a full day of tool operation. For an abatement system with more than one connected tool, the tool operating time is equivalent to a full year if at least one tool was installed at all times throughout the year. The reporter has the option to account for time that tools are idle and no gas is flowing through the tools to the abatement system.

It is important to note that the calculation of the uptime factor is different when a reporter is using the promulgated stack testing method than when the reporter is using the default gas utilization rate and by-product formation rate method. In the stack testing method, uptime is not determined for each gas and process type combination, as it is under the final revisions to the default emission factor method. Instead, the uptime factor is based on an aggregate for all tools and gases in the fab for which the stack testing method is being used. In contrast, the default gas utilization rates and by-product formation rates are based on ''unabated emissions'' of each gas, and the uptime factor needs to be determined for each gas and process type combination to determine the portion of emissions that have been abated. ''Unabated emissions'' are gas streams containing F–GHG or N_2O which has exited the process, but which has not yet been introduced into an abatement system to reduce the mass of F–GHG or N_2O in the stream. If the emissions from the process are not routed to an abatement system, or are routed to an abatement device that is not in an operation mode, unabated emissions are those F–GHG or N_2O released to the atmosphere.

To calculate an unabated emission factor during periods of downtime in the stack testing method, the reporter must divide the abated emission factor by $(1—d_{if})$, where d_{if} is the average weighted fraction of F–GHG is destroyed or removed in the POU abatement system(s) in the fab. The factor d_{if} is calculated using Equation I–24 in subpart I, based on the gas consumption and destruction and removal efficiency (DRE) for the abatement system(s) for each gas and process type combination.

When calculating annual emissions, the reporter must continue to collect abatement system downtime data and calculate the fraction of abatement system uptime for the fab. Excess emissions from abatement system downtime events are determined based on the actual amount of downtime as a percent of the total annual abatement system operating time for the reporting year. For example, if a fab had 2.0 percent downtime for the year, then the unabated emission factor is applied to 2.0 percent of the gas consumption for the year to calculate the excess emissions. The abated emission factor is applied to the other 98 percent of gas consumption for the fab. The excess emissions and the abated emissions are added together to determine the total annual emission from the fab.

Calculating an average fab-specific emission factor. The reporter must calculate an average fab-specific emission factor using Equation I–19 in subpart I for each input F–GHG and Equation I–20 for each by-product F–GHG, based on the testing results (average kg/hr) and the F–GHG gas consumption (average kg/hr). The fab-specific emission factor for each input F–GHG and each F–GHG formed as a by-product takes into account the mass emission rate, the gas consumption, the abatement system uptime, and the F–GHG destroyed or removed from the abatement systems. The fab-specific emission factor for input gases is in units of kilograms (kg) gas emitted per kg of the same gas consumed (kg/kg).

For gases generated as by-products, the fab-specific emission factor is the mass of the by-product emitted divided by the summed masses of all the F–GHGs consumed, as presented in Equation I–20. This equation applies to those F–GHGs that are emitted as by-products and is not used for gases consumed as input gases.

The reporter must calculate annual emissions for each F–GHG by-product gas as the product of the fab-specific emission factor and the total annual amount of F–GHG consumed, corrected for any POU abatement system downtime as described in this section of the preamble.

In some cases, emissions of a particular F–GHG input gas may exceed consumption of that gas because the F–GHG is generated as a by-product of the

other input gases. This is often the case for CF_4. In these cases, the reporter must use 1.0 as the input F–GHG emission factor and treat the remainder of that F–GHG's emissions as a by-product of the other input gases. The reporter must use Equation I–20 to calculate the emission factor for the by-product emissions. For example, if during the testing, the fab consumed 100 kg of an F–GHG, but the stack testing measured 300 kg of that gas, the reporter must assign 100 kg of that F–GHG as an input gas used in proposed Equation I–19, and 200 kg of that gas as a by-product gas used in proposed Equation I–20. In this instance, the denominator in Equation I–20 includes the consumption of all other F–GHGs, with the exception of the F–GHG being included in the numerator. This treatment of the denominator reflects the fact that we are assuming that the F–GHG in the numerator is formed as a by-product from all other F–GHGs, while the emissions from the actual consumption of that F–GHG as an input are being accounted by Equation I–19. For calculating emissions from an F–GHG with an input emission factor equal to 1.0 and with a by-product emission factor, the input F–GHG emissions are assumed to equal consumption of that F–GHG, and the by-product emissions are determined by multiplying the by-product emission factor by the sum of the consumption of all F–GHGs excluding the by-product F–GHG.

Testing frequency. The EPA is finalizing in 40 CFR 98.94(j)(5)(i) the requirement for annual testing of each stack system and annual calculation of emission factors, excluding those low-emitting stack systems that are exempt from testing. However, to offer flexibility, the EPA is also promulgating in 40 CFR 98.94(j)(5)(ii) an option to allow reduced testing frequency based on variability in measured emission factors. If the reporter meets criteria for low measured variability in emission factors calculated from the test results, then testing frequency may be reduced to every 5 years instead of annually. Under this option, a reporter must conduct a minimum of three emission tests for each non-exempt stack, with at least 2 months between the tests on a single stack system. All tests may be done in one year, or the reporter may use three annual tests for this analysis. If the relative standard deviation (RSD) of the emission factors calculated from each of the three tests, expressed as CO_2e for all F–GHG combined, is less than or equal to 15 percent, and the RSD of the emission factors for each single F–GHG that individually accounts for 5 percent or more of CO_2e emissions is less than 20 percent, the facility may use the averages of the three emission factors for each F–GHG for annual reporting for that year and the next 4 years without testing, unless conditions change that affect the emission factors and trigger retesting, as specified in 40 CFR 98.94(j)(8) and described in this section of the preamble. If the variability among the three tests does not meet these criteria, then the facility must use the emission factors from the most recent testing for reporting for that year and continue the annual testing. Facilities may repeat the RSD analysis each year using the previous three sets of data.

In addition, previously completed tests that were performed and verified according to EPA Method 320, ASTM D6348–03, or an alternative method validated using EPA Method 301 may be applied towards the three tests required under this option, as long as all three tests were completed no earlier than January 1, 2011 and they meet the final rule requirements for stack testing under 40 CFR 98.94(j). We are also allowing reporters to use previously completed tests that include minor deviations from the requirements for stack testing. However, the use of such data must be approved by the Administrator (or an authorized representative) on a case-by-case basis, according to the review procedure specified in 40 CFR 98.94(j)(7). This procedure is similar to that specified for review and approval of an alternative stack testing method in 40 CFR 98.94(k), but it does not require the use of EPA Method 301 to validate the prior test data. The EPA retains the right to not approve the use of data that do not meet the data quality requirements in 40 CFR 98.94(j)(7).

Reporters are required to conduct testing of each stack system that is not a low-emitting stack system, regardless of the results of the most recent stack tests, if certain changes take place in the reporters' annual consumption of F–GHGs or in the equipment and processes at the fab. Testing must be repeated to develop a new fab-specific emission factor if consumption of a specific input gas used during the emissions test changes by more than 10 percent of total annual gas consumption in CO_2e, relative to gas consumption in CO_2e for that gas during the year in which the most recent emissions test was conducted. For example, if use of a single gas goes from 25 percent of CO_2e to more than 35 percent of CO_2e, that would trigger the need for a new test. If there is a change in the reporter's use of an intermittent low-use F–GHG that was not used during the emissions test and not reflected in the fab-specific emission factor, such that it no longer meets the definition of intermittent low-use F–GHG (see ''Stack testing requirements'' in Section II.A.1 of this preamble), the reporter is required to re-test using that gas. Additionally, if there is: (1) A decrease by more than 10 percent in the fraction of tools with abatement systems, compared to the fraction of tools with abatement systems during the most recent emissions test; (2) a change in the wafer or substrate size used by the fab since the most recent emissions test; or (3) a change in a stack system that formerly met the criteria as a low-emitting stack system for not being subject to testing, such that it no longer meets those criteria, then the reporter is also required to re-test.

Finally, if a reporter is using a F–GHG that was not used during the emissions test, the reporter is required to conduct additional stack tests in that year during a period when that gas is being used to determine an emission factor for that gas. If a F–GHG is no longer used or is an intermittent low-use gas, re-testing is not required, and F–GHG emissions must be calculated according to the process for intermittent low-use gases.

As stacks are re-tested, reporters must update the fab-specific emission factors with the new data from those stacks, replacing the data from the earlier testing of the same stack. The reporters are also required to annually review the current data for determining which stacks were exempt from testing to ensure that the low-emitting stacks still qualify for exemption. If a stack no longer meets the criteria for exemption from testing as a low-emitting stack, it must be tested and the fab-specific emission factor must be recalculated including those data.

Finally, if a requirement to re-test stacks is triggered, the reporter must re-evaluate the RSD of the emission factors, including the most recent test results and the previous two test results, to determine if the fab still complies with the provisions that allow the fab to skip testing. If the fab does not meet those provisions, annual testing must resume and three stack tests must be completed and a new RSD analysis must be performed. Even if the fab meets those requirements to skip testing, annual testing still must resume no later than the fifth year after the original RSD analysis that was performed before the retesting requirement was triggered.

2. Revise the Default Gas Utilization Rates and By-Product Formation Rates for the Plasma Etch Process Category for Facilities That Manufacture Semiconductors

The EPA is amending the default plasma etch and chamber cleaning gas utilization rates and by-product formation rates and the requirements in 40 CFR 98.93(a)(2) for estimating F–GHG emissions from plasma etch processes at semiconductor manufacturing facilities. The EPA is not amending the default emission factors for other types of electronics manufacturing facilities.

First, the EPA is providing that all semiconductor manufacturing facilities, regardless of manufacturing capacity, have the option to calculate F–GHG emissions from the plasma etching process type using the appropriate default gas utilization rates and by-product formation rates provided in Tables I–3 and I–4 of subpart I. Under these final amendments, no electronics manufacturing facility has the option to determine and use recipe-specific gas utilization rates and by-product formation rates for the plasma etch process type. The EPA is removing the distinction between large and other semiconductor facilities, such that all semiconductor manufacturing facilities may use the default gas utilization rates and by-product formation rates, independent of facility size.

Second, we are revising the default emission factors for the plasma etch process type in Tables I–3 and I–4 of subpart I. The revised default emission factors are based on an expanded data set provided to the EPA by semiconductor manufacturing facilities after subpart I was originally promulgated in December 2010 in addition to data provided by commenters during the public comment period. The revised emission factors have been updated since proposal to account for the new data that were submitted during the public comment period, as discussed in Section II.B of this preamble. For more information regarding the revised by-product emission factor calculation methodology, please refer to ''Technical Support for Modifications to the Fluorinated Greenhouse Gas Emission Estimation Method Option for Semiconductor Facilities under Subpart I,'' Docket ID No. EPA–HQ–OAR–2011–0028.

Finally, as the EPA proposed, the EPA is combining the semiconductor wafer cleaning process type with the plasma etch process type; the amended rule does not have separate default emission factors for semiconductor wafer cleaning in the revised Table I–3 and I–4 of subpart I.

For the chamber clean process type, semiconductor manufacturing facilities must estimate emissions from chamber clean and plasma etch processes using the following four process types/sub-types: (1) Plasma etch/wafer cleaning process type; and (2) chamber cleaning process type, including (2a) in situ plasma chamber cleaning; (2b) remote plasma chamber cleaning; and (2c) in situ thermal chamber cleaning.

If gas utilization rates and by-product formation rates are not available for a gas/process combination in Tables I–3 or I–4 of subpart I, reporters must assume that the utilization and by-product formation rates are zero (i.e., assume that emissions of a gas equals consumption of that gas). This approach is consistent with the methodology in the current subpart I rule, except that we are removing the option for facilities to develop recipe-specific factors.

All other provisions related to the method using default gas utilization rates and by-product formation rates, such as the wafer size classes used for the default emission factors in Tables I–3 and I–4, remain the same. The only exception is that the default emission factors in Table I–4 that apply to 300 mm wafers also apply to 450 mm wafers. As more data (i.e., utilization and by-product formation rates) become available for the semiconductor manufacturing industry in the future, the EPA will consider adding new default emission factors to Tables I–3 and I–4 for new gas and process type/sub-type combinations, including adding any new default emission factors specifically for semiconductor manufacturing facilities using 450 mm wafers. However, for these final amendments, facilities using wafers greater than 300 mm diameter must use the same default emission factors as those using 300 mm wafers. Section II.A.12 of this preamble describes the process that EPA will follow for updating default emission factors as more information is collected from the electronics manufacturing industry.

3. Removing the Provisions for Using Recipe-Specific Gas Utilization Rates and By-Product Formation Rates for Facilities That Manufacture Electronics

The EPA is removing the provisions to use recipe-specific gas utilization rates and by-product formation rates in 40 CFR 98.93(a)(2)(ii)(A), (a)(3), and (a)(4), as proposed.

Although the EPA has deferred the mandatory use of recipe-specific gas utilization rates and by-product formation rates through the end of 2013 (76 FR 59542, September 27, 2011), as a result of these final amendments, no semiconductor manufacturing facility has the option to use the recipe-specific method or report those data elements after the end of 2013. In addition, we are removing the recipe-specific method as an option for other electronics manufacturing facilities.

No facilities have used the recipe-specific emission factor methods in 40 CFR 98.93(a)(2)(ii)(A), (a)(3), (a)(4), or (a)(6) for reporting emissions for 2011 or 2012. According to information the EPA has received from industry members, no facilities are known to be planning to use the recipe specific methods in 2013 for emissions reported in 2014. All comments received by the EPA supported removing the recipe specific method, and the EPA received no comments asking that this method be retained in Subpart I. However, reporters may still use the recipe-specific methods for estimating 2013 emissions reported in 2014. Following the January 1, 2014 effective date of this rule, reporters are required to select calculation methods to estimate emissions for 2014 reported in 2015, and thereafter, based on the options in these final amendments to subpart I.

Finally, we are revising 40 CFR 98.93(a)(6) to remove the option to develop recipe-specific gas utilization rates and by-product formation rates for F–GHG and process combinations for which no default emission factors are available. We are also revising 40 CFR 98.93(b)(1)(i) and (b)(2)(i) to remove the option to develop facility-specific N_2O emission factors. Under 40 CFR 98.93(a)(6), for gas and process combinations without default factors, facilities must assume that F–GHG emissions equal F–GHG consumption, which is equivalent to treating the utilization and by-product formation rates as both zero. Under the final revisions to 40 CFR 98.93(b), facilities must use default N_2O emission factors for both CVD processes and for the aggregate of all other manufacturing production processes, and do not have the option to develop facility-specific N_2O emission factors. EPA is not revising the current default N_2O emission factors in this final rule. The emission factor for CVD processes is 0.8 and the emission factor for the aggregate of all other manufacturing production processes is 1.0.

4. Applicability and Calculating Annual Manufacturing Capacity for Facilities That Manufacture Electronics

The EPA is revising the calculation to determine annual capacity for

electronics manufacturing facilities, which is used in the calculation to determine whether a facility meets the reporting threshold. First, we are revising Equation I–5 to clarify that reporters must sum the annual manufacturing across each fab to determine the annual manufacturing capacity of the facility. This is a change since proposal to reflect other changes in the rule that calculate emissions per fab. The EPA is replacing the phrase ''maximum designed substrate starts of a facility'' in Equation I–5 with the phrase ''maximum substrate starts of the fab,'' as proposed. Likewise, as proposed, we are replacing the definition in 40 CFR 98.98 of ''maximum designed substrate starts'' with that for ''maximum substrate starts,'' which is defined as ''the maximum quantity of substrates, expressed as surface area, that could be started each month during a reporting year based on the equipment installed in that fab and assuming that the installed equipment were fully utilized. Manufacturing equipment is considered installed when it is on the manufacturing floor and connected to required utilities.''

A reporter must continue to use Equation I–5, with these revisions, to determine the annual manufacturing capacity of the facility to determine if they meet the threshold for reporting under subpart I.

The final rule includes revised requirements, as proposed, in 40 CFR 98.96(a) and (b) to calculate and report the maximum annual capacity and the actual annual production, respectively, for each fab in the facility, and to clarify that the maximum capacity is based on the equipment on-site in the reporting year, assuming it is fully utilized, rather than the design capacity.

The changes do not affect the applicability of subpart I to any facility that is already reporting GHG emissions under subpart I. The mere fact that a facility that is already reporting would not meet the applicability test in 40 CFR 98.91 under the revised subpart I does not relieve its obligation to report. Facilities may cease reporting only if they meet the criteria in 40 CFR 98.2(i).

We are also removing the requirement, as proposed, that semiconductor manufacturing facilities calculate and report their F–GHG emissions based on the annual manufacturing capacity of the facility and the size of wafers that the facility is manufacturing. Subpart I currently distinguishes between ''large'' and ''other'' semiconductor facilities based on the calculated annual manufacturing capacity. Except as provided in the September 27, 2011 final rule titled ''Changes to Provisions for Electronics Manufacturing to Provide Flexibility in 2011 to 2013,'' subpart I requires ''large'' semiconductor facilities (facilities with an annual manufacturing capacity of greater than 10,500 m_2 of substrate) and those facilities that manufacture wafers greater than 300 mm in diameter to calculate emissions using recipe-specific utilization and by-product formation rates. As discussed in Sections II.A.1 through II.A.3 of this preamble, we are revising the calculation methodologies for semiconductor manufacturers. The calculation methods apply to all semiconductor manufacturers and there is no longer a need to distinguish ''large'' facilities based on manufacturing capacity.

5. Integrated Production and R&D Activities for Facilities That Manufacture Electronics

The EPA is finalizing provisions, as proposed, to allow all electronics manufacturing facilities covered by subpart I to report R&D emissions with their total facility emissions and to identify that emissions associated with R&D activities are included in their overall emissions estimates. We are also requiring facilities that report integrated R&D emissions to report an estimate of the range of the percentage of total emissions from their R&D activities as part of their annual report (40 CFR 98.96(x)), and to keep records documenting that determination (40 CFR 98.97(j)).

6. Accuracy and Precision of Monitoring Instrumentation for Facilities That Manufacture Electronics

The EPA is removing the requirements in 40 CFR 98.94(i) that all measuring devices meet an accuracy and precision of 1 percent of full scale or greater. Instead, as proposed, we are requiring electronics manufacturing facilities subject to subpart I to meet the existing General Provision calibration accuracy requirements in subpart A (40 CFR 98.3(i)). The calibration accuracy requirements for gas flow measurement devices are 5 percent, as specified in 40 CFR 98.3(i). Further, other measuring devices (e.g., weigh scales and thermometers) are required to be calibrated to an accuracy based on an applicable operating standard, including, but not limited to, device manufacturer's specifications and industry standards (40 CFR 98.3(i)(1)(i)).

7. Facility-Wide Gas Specific Heel Factor for Facilities That Manufacture Electronics

The EPA is amending, as proposed, the requirements in subpart I to clarify that recalculating the heel factor is only needed when the trigger point for a specific gas and cylinder type is changed, and not as a result of variation in the actual heel remaining in a cylinder. We are amending 40 CFR 98.94(b)(5) to clarify that a gas-specific heel factor must be recalculated when the facility executes a process change to modify the trigger point for a gas and container type that differs by more than 5 percent from the previously used trigger point for that gas and container type.

We are also clarifying, since proposal, that the facility is not required to estimate the fab-specific heel factor for F–GHGs or N_2O that are used in quantities of less than 50 kg in one reporting year and for which emissions are calculated as equal to consumption, or for any intermittent low-use F–GHG.

The EPA is also revising, as proposed, the ''exceptional circumstance'' criteria at 40 CFR 98.94(b)(4) with respect to small containers. Specifically, we are revising the criteria for an ''exceptional circumstance'' in 40 CFR 98.94(b)(4) from 20 percent of the original trigger point for change out to 50 percent for small cylinders. We are defining a small cylinder as a container that contains less than 9.08 kg (20 pounds) of gas. For large containers, the ''exceptional circumstance'' remains as a change out point that differs by 20 percent of the trigger point used to calculate the gas-specific heel factor. The revisions still require facilities to measure the heel in cases where the cylinder change out deviated from the established trigger point. For example, a small 15-pound cylinder with a 2 pound trigger point must still be measured, in lieu of using the established heel factor, if the difference in the change out point is greater than 1 pound. In this example, this 1 pound difference (based on the 50-percent criteria for an exceptional circumstance) represents less than 8 percent of the usable gas in the cylinder.

8. Apportioning Model Verification for Facilities That Manufacture Electronics

The EPA is amending the apportioning model verification requirements. First, the final amendments, as proposed, allow reporters the option to use direct measurements of gas consumption to avoid the need to develop an apportioning model, and to develop an apportioning factor for each process

type, sub-type, stack system, or fab using gas flow meters or weigh scales. The final amendments also retain the option to use an apportioning model and the verification requirements. Reporters opting to use the apportioning model must verify the model by comparing actual gas consumption to modeled gas consumption. The reporter must select for comparison the F–GHG that corresponds to the largest quantity, on a mass basis, of F–GHG used at the fab that has to be apportioned. Reporters may alternatively verify the model for two F–GHGs on an aggregate use basis if one of the gases selected is used in the largest quantity at each fab that is required to be apportioned. In this option, the predicted total mass consumed of the two gases combined must match the actual total mass consumed within the verification percent difference requirements for the apportioning model.

Second, where a facility opts to develop and use an apportioning model, we are revising, as proposed, the verification standard to increase the allowable difference between the actual and modeled gas consumption from a maximum 5 percent difference to a maximum of 20 percent difference.

We are finalizing changes, as proposed, to allow facilities to select a period of the reporting year when the fab is at a ''representative operating level,'' as defined in 40 CFR 98.98, for the model verification, instead of at a minimum percent of design capacity, or instead of at the highest 30-day average utilization. Under these final amendments, the representative period must still be at least 30 days, but we are clarifying that it can be up to the whole calendar reporting year in duration.

9. Calculating N_2O Emissions for Facilities That Manufacture Electronics

The EPA is revising the language for calculating N_2O emissions in 40 CFR 98.93(b) to require reporting at the fab level, as proposed. We are finalizing, as proposed, the requirement that facilities must only use the default N_2O utilization factors in Table I–8 of subpart I, and removing the option to measure and use facility-specific N_2O emission factors. However, the EPA is not revising the default factors of 0.8 for CVD processes and 1.0 for all other N_2O-using manufacturing processes in the current Table I–8 of subpart I. The reasons for not adopting the default N_2O emission factors that were proposed are described in section II.B of this preamble.

The EPA is revising 40 CFR 98.93(b), as proposed, to clarify that facilities must report two N_2O emission values for each fab at a facility: one for the aggregate of all CVD processes and one for the aggregate of all other N_2O using manufacturing processes. We are finalizing similar changes to the reporting requirements in 40 CFR 98.96(c) for consistency and clarification.

10. Abatement System Destruction and Removal Efficiency (DRE) for Facilities That Manufacture Electronics

The EPA is revising provisions for directly measuring abatement system DRE, and the basis for determining average DRE values for groups of similar abatement systems. These amendments apply to all electronics manufacturers. All reporters covered under subpart I still have the option of using either default DRE factors or a measured DRE value to calculate abated emissions.

We are finalizing the option, as proposed, to allow reporters to establish a measured DRE value for gas and process type combinations, rather than for each abatement system or ''class'' of abatement systems. Reporters may measure the DRE for a gas and process type combination in which F–GHG and N_2O are used in tools with abatement systems and for which abated emissions are calculated. Reporters may use a combination of measured and default DRE values; however, if a reporter develops a measured DRE value for abatement systems for a specific gas and process type combination for a fab, the resulting measured DRE must be used for that gas and process type combination and a default DRE factor cannot be used for that fab. In addition, the default DRE values may only be used for abatement systems specifically designed for F–GHG or N_2O abatement. If a reporter elects to claim abatement for a system that is not specifically designed for F–GHG or N_2O abatement, they must use a measured site-specific DRE for that system.

We are also amending subpart I to allow reporters, as proposed, to use methods adapted from the 2009 ISMI Guideline tracer release/FTIR monitoring approach for determining abatement system DRE (hereafter, the ''2009 ISMI Guideline'') [2] and also an alternative method to locate sampling sites. These alternatives are included in Appendix A to subpart I. We are also promulgating, as proposed, provisions that allow facilities to use an adaptation of Section 8.1 of EPA Method 7E at 40 CFR part 60, appendix A–4 as an alternative to determine whether the injected tracer is well mixed in the duct system or is stratified (i.e., poorly mixed), and to adjust the sampling if it is stratified. The concentration of the tracer must be measured at three traverse points at 16.7, 50.0, and 83.3 percent of the diameter of the duct and must be sampled for a minimum of twice the system response time. If the tracer gas concentration at each traverse point differs from the mean concentration for all traverse points by no more than ±5.0 percent of the mean concentration, the gas stream may be considered un-stratified and the facility is allowed collect samples from a single point that most closely matches the mean. If the 5.0 percent criterion is not met, but the concentration at each traverse point differs from the mean concentration for all traverse points by no more than ±10.0 percent of the mean, a facility may take samples from two points and use the average of the two measurements. The two points must be spaced at 16.7, 50.0, or 83.3 percent of the line. If the concentration at each traverse point differs from the mean concentration for all traverse points by more than ±10.0 percent of the mean but less than ±20.0 percent, the facility must take samples from three points at 16.7, 50.0, and 83.3 percent of the measurement line and use the average of the three measurements. If the gas stream is found to be stratified because the ±20.0 percent criterion for a three-point test is not met, the facility must locate and take samples from traverse points for the test in accordance with Sections 11.2 and 11.3 of EPA Method 1 at 40 CFR part 60, appendix A–1. This finalized protocol is an adaptation of the protocol in Section 8.1.2 of EPA Method 7E, Determination of Nitrogen Oxides Emissions from Stationary Sources (Instrumental Analyzer Procedure), in 40 CFR part 60, Appendix A–4.

In addition, we are also allowing reporters, as proposed, to request approval to use an alternative sampling and analysis method to measure abatement system DRE that is not included in subpart I, provided the reporter follows the process to obtain the Administrator's approval specified in 40 CFR 98.94(k). The approval process is the same process used to obtain the Administrator's approval to use an alternative stack testing method (see ''Alternative stack test methods'' in Section II.A.1 of this preamble).

We are amending the random sampling abatement system testing

[2] Benaway, B., Hall, S., Laush, C., Ridgeway, R., Sherer, M., & Trammell, S. (2009). ''Guideline for Environmental Characterization of Semiconductor Process Equipment—Revision 2'', TT#06124825B–ENG, International SEMATECH Manufacturing Initiative (ISMI), December 2009, Available at: *http://www.sematech.org/docubase/document/4825beng.pdf.*

program (RSASTP), as proposed, to reduce the amount of testing that must be performed by an individual facility. These final amendments require that facilities test 10 percent of systems annually over a 2-year period (20 percent total) to set a baseline DRE for the given gas and process type combination. The systems must be randomly selected. A facility may test 20 percent of abatement systems in the first year. Until the facility measures 20 percent of abatement systems for a gas and process type combination (e.g., for calculating emissions in the first year if they test only 10 percent of systems per year), they must use the default DRE factors to calculate emissions. For every 3-year period after, facilities are required to randomly select and test 15 percent of the systems to validate the site-specific DRE. The reporter may opt to test 15 percent of the systems in the first year of the 3-year period, but must test at least 5 percent of the systems each year until 15 percent are tested.

If testing of a particular randomly selected abatement system is disruptive to production, the reporter may replace that system with another randomly selected system and return the other to the sampling pool for subsequent testing. We are finalizing the requirement that a system cannot be returned to the subsequent testing pool for more than three consecutive selections and must be tested on the third selection. We are also allowing a reporter to specifically include in one of the next two sampling years a system that could not be tested when it was first selected so that the reporter can plan for the testing of that system when it will be less disruptive.

We are finalizing the requirement, as proposed, that the average DRE for each gas and process type combination must be calculated first as the arithmetic mean of the first 2 years of measurements. Beginning in the third year of testing, the average DRE must be the arithmetic mean of all test results for that gas and process type combination, until the facility tests at least 30 percent of all systems for each gas and process combination. After testing at least 30 percent of all systems for a gas and process combination, the facility must use the arithmetic mean of the most recent 30 percent of systems tested as the average DRE in the emissions calculations.

To account for measurements that may be affected by improper maintenance or operation of the abatement systems during a DRE measurement, the measured DRE value must be used as follows: (1) Where the DRE of some abatement units is below the design and default DRE, and the abatement system is installed, operated, and maintained in accordance with the site maintenance plan for abatement systems, the data from the low DRE test must be included in calculating the fab-specific DREs; (2) If proper maintenance and operation procedures have not been not followed, then the facility must implement the appropriate operational change or system maintenance (per the site maintenance plan for abatement systems), and retest that device within the same reporting year. In this case, a reporter is not required to include in the average DRE calculation the DRE result from the device for which proper maintenance and operation procedures were not followed. As an alternative, instead of retesting that device within the reporting year, the reporter may use the measured DRE value in calculating the average DRE for the reporting year, and then include the same device in the next year's abatement system testing in addition to the testing of randomly selected devices for that next reporting year. Regardless of whether or not the reporter uses the low DRE value in calculating the average measured DRE, the reporter must count the period during which the proper maintenance and operation procedures were not being followed toward that abatement system's downtime for the year for the purposes of calculating emissions.

For reporters who do not measure facility-specific DRE values, we are also allowing electronics manufacturing facilities to use a default DRE for abatement systems that are specifically designed for F–GHG or N_2O abatement (as applicable) and that are operated and maintained according to the facility's abatement system site maintenance plan that is based on the abatement system(s) manufacturer's recommendations and specifications for installation, operation, and maintenance. For semiconductor manufacturing facilities, we are revising and expanding the available DRE default values that may be used to calculate emissions. The revised default DREs for semiconductor manufacturing facilities are included in Table I–16. We are not revising or expanding default DRE factors for other electronics manufacturers (MEMS, LCDs, and PV cells); no changes to these DRE factors were proposed. Facilities manufacturing MEMS, LCDs, and PV cells must use the 60 percent default DRE if they do not develop facility-specific DRE values and elect to account for abatement system DRE in their reported emissions.

We are revising the default DRE factors for semiconductors since proposal to reflect the results of the EPA's analysis of DRE test data for specific gas and process type combinations, which includes data that were submitted to the EPA during the comment period. The final default DRE factors also reflect a change since proposal in the statistical method used to calculate the default DRE factors as a result of public comments. The change in the method and EPA's rationale for adopting the different method is discussed in more detail in section II.B.5 of this preamble. The revised default DRE factors for the gas and process type combinations for semiconductor manufacturing are shown in Table I–16 of Subpart I. The EPA will add new or revised default DRE factors when appropriate data become available in the future. See Section II.A.12 of this preamble for the process for updating default emission factors and default DRE factors as more data are collected for the semiconductor manufacturing industry.

In order to ensure that the abatement systems used are performing in a way that meets the default DRE or the measured DRE, we are requiring, as proposed, that facilities certify that abatement systems are properly installed, operated, and maintained according to the site maintenance plan for abatement systems (40 CFR 98.97(d)(9)). The site maintenance plan for abatement systems must define the required operation and maintenance procedures for each type of abatement system used at the facility, and must include corrective action procedures for when an abatement unit is not operating properly. The site maintenance plan must be based on the manufacturer's recommendations and specifications for installation, operation, and maintenance, where available. The site maintenance plan for abatement systems must also include documentation where the operation and maintenance deviate from the manufacturer's specifications, including an explanation of how the deviations have a positive or neutral effect on the performance or destruction or removal efficiency of the abatement system. For example, a reporter may include documentation of more frequent maintenance checks or tighter operating parameters that optimize system performance. The site maintenance plan for abatement systems must be kept as part of the GHG monitoring plan required by 40 CFR 98.3(g)(5).

We are also specifying that if the manufacturer's recommendations and specifications for installation, operation, and maintenance are not available (e.g., for older fabs that want to claim abatement in their reported emissions), then facilities may not use the default DRE factors found in Table I–16 for

those abatement systems, but do have the option to properly measure site-specific DREs following the requirements of 40 CFR 98.94(f)(4). Facilities also have the option to report their annual emissions without accounting for abatement. This is a change since proposal, and the rationale for this change is discussed in more detail in section II.B of this preamble.

Furthermore, we are also requiring that facilities using the default emission factors who elect to claim abatement for reporting purposes and elect to use the default DRE values must also certify that the abatement systems are specifically designed for F–GHG abatement (or N_2O abatement, as appropriate) in addition to the requirement that the manufacturer's recommendations and specifications for installation, operation, and maintenance be incorporated into the site maintenance plan. In response to public comments, we have revised the definition of ''abatement system'' since proposal to be clear that we meant a device or equipment that is designed to destroy or remove F–GHGs (or N_2O, as appropriate) in exhaust streams from one or more electronics manufacturing production processes, or for which a site-specific DRE has been measured according to 40 CFR 98.94(f). We are also revising 40 CFR 98.94(f), in response to comments since proposal, to clarify that if facilities elect to use the stack test alternative in 40 CFR 98.93(i) and elect to account for abatement, they must certify that the system is designed to abate F–GHGs, or they must measure a site-specific DRE according to 40 CFR 98.94(f). We have also included a requirement that facilities using the stack test alternative must certify that that all abatement systems that are designed to abate F–GHGs or for which a site-specific DRE has been measured are fully accounted for when calculating annual emissions and accounting for excess emissions from downtime using the methods in 40 CFR 98.93(i)(3). If an abatement system is not designed to abate F–GHG, then reporters may elect to not account for any incidental F–GHG abatement from that system under the stack testing alternative.

11. Abatement System Uptime for Facilities That Manufacture Electronics

The EPA is revising the methods used to calculate abatement system uptime. For facilities that are using the default gas utilization rates and by-product formation rates, we are amending 40 CFR 98.93(g) to allow reporters to calculate the uptime of all the abatement systems for each combination of input gas or by-product gas and each process type or sub-type combination, using the same process categories in which F–GHG use and emissions are calculated. We are revising Equation I–15 to calculate the average uptime factor for all abatement system connected to process tools for a given input gas and process type or subtype. The same uptime factor will be used for both input gases and the associated by-product gases for that input gas and process combination. However, since proposal we have removed the separate equations for uptime of abatement systems applied to input gases and by-product gases and the final rule has only a single equation for uptime applicable to all gases. The reason for this change since proposal is discussed in more detail in Section II.B of this preamble.

Reporters are required, as proposed, to determine the average abatement system uptime factor for a given gas/process type or sub-type combination by: (1) Calculating the total time that the abatement system connected to process tools in the fab is not operating within site maintenance plan specifications as a fraction of the total time in which the abatement system has at least one associated tool in operation during the reporting year for each gas/process type combination; and (2) by subtracting this fraction from 1.0 to calculate the uptime fraction. For determining the amount of tool operating time, reporters may assume that tools that were installed for the entire reporting year were operated for 525,600 minutes per year. For tools that were installed or uninstalled during the year, reporters must prorate the operating time to account for the days in which the tool was not installed; any partial day that a tool was installed must be treated as a full day (1,440 minutes) of tool operation. If a tool is ''idle'' with no gas flowing through it to the abatement system, the reporter has the option to count only the time that the tool has gas flowing through it for purposes of determining the tool operating time. For an abatement system that has more than one connected tool, the tool operating time must be considered to be equivalent to a full year if at least one tool was installed and operating at all times throughout the year.

12. Triennial Technology Report for Semiconductor Manufacturing

We are requiring certain semiconductor manufacturing facilities, as proposed, to provide a report to the EPA every 3 years, beginning in 2017, that addresses technology and process changes at the facility that could affect GHG emissions. The report must address how technology and processes have changed in the industry over the previous 3 years and the extent to which any of the identified changes are likely to have affected the GHG emissions characteristics (i.e., the identity, amount, frequency, concentration, or other characteristics related to GHG emissions) of semiconductor manufacturing processes in such a way that the default gas utilization rates and by-product formation rates and/or default DRE factors in subpart I may need to be updated or augmented. The EPA plans to have reporters submit this report using the Electronic Greenhouse Gas Reporting Tool (e-GGRT) system.

We are requiring, as proposed, that the first 3-year report be due with the annual GHG emissions report submitted in 2017. Only semiconductor manufacturing facilities subject to subpart I and with emissions from subpart I processes greater than 40,000 $mtCO_2e$ per year CO_2e are required to submit the report. The requirement to submit the first report in 2017 is based on the facility's emissions in 2015 (which would be reported in 2016), and the requirement to submit subsequent reports is based on emissions in the most recently submitted annual GHG report. For example, any facility that reported GHG emissions from the subpart I source category of greater than 40,000 $mtCO_2e$ for reporting year 2015 must submit the 3-year report due in 2017. To reduce burden, we are allowing the option for multiple semiconductor manufacturing facilities (regardless of whether they are owned by the same parent company) to submit a single consolidated 3-year report. Facilities with reported emissions at or below 40,000 $mtCO_2e$ per year may voluntarily prepare and submit a report. Facilities that are not subject to reporting under subpart I based on the applicability criteria in subparts A and I are not required to submit a 3-year report.

The 3-year report must include, as proposed, the following: (1) Whether and how the gases and technologies used in 200 mm and 300 mm wafer semiconductor manufacturing in the United States have changed and whether any of the identified changes are likely to have affected the emissions characteristics of semiconductor manufacturing processes in such a way that the default gas utilization rates and by-product formation rates or default DRE factors may need to be updated; (2) The effect of the implementation of new products, process technologies, and/or finer line width processes in 200 mm and 300 mm technologies, the introduction of new tool platforms and process chambers, and the introduction of new processes on previously tested

platforms or process chambers; (3) The status of implementing 450 mm wafer technology and the potential need to create or update gas utilization rates and by-product formation rates compared to 300 mm technology; and (4) The submission of any gas utilization rates and by-product formation rate or DRE data that have been collected in the previous 3 years that support the changes or continuities in semiconductor manufacturing processes described in the report.

If the report indicates that the emissions characteristics of semiconductor manufacturing processes may have changed (i.e., the identity, amount, frequency, or concentration), the report must include a data gathering and analysis plan describing the testing of tools to determine the potential effect on current gas utilization rates and by-product formation rates and DRE values under the new conditions, and a planned analysis of the effect on overall facility emissions using a representative gas-use profile for a 200 mm, 300 mm, or 450 mm fab (depending on which technology is under consideration). The EPA will review the reports received and determine whether it is necessary to update the default gas utilization rates and by-product formation rates in Tables I–3, I–4, I–11, and I–12, and default DREs in I–16 based on the following: (1) Whether the revised default gas utilization rates and by-product formation rates and DREs would result in a projected shift in emissions of 10 percent or greater for each gas and process type or process subtype; (2) Whether new platforms, process chambers, processes, or facilities that are not captured in current default gas utilization rates and by-product formation rates and DRE values should be included in revised values; and (3) Whether new data are available that would expand the existing data set to include new gases, tools, or processes not included in the existing data set (i.e. gases, tools, or processes for which no data are currently available).

The EPA will review the report(s) within 120 days and notify the facilities that submitted the report(s) whether the Agency determined it was appropriate to update the default emission factors and/or DRE values. If the EPA determines it is necessary to update the default emission factors and/or DRE values, those facilities would then have 180 days following the date they receive notice of the determination to execute the data collection and analysis plan described in the report and submit those data to the EPA. The EPA will then determine whether to issue a proposal to amend the rule to update the default emission factors and/or DRE values using the newly submitted data.

13. Final Amendments to Reporting and Recordkeeping Requirements

In this action, the EPA is finalizing several changes (additions as well as revisions) to the data reporting and recordkeeping requirements in subpart I. Table 2 of this preamble summarizes the changes to the reporting elements, and notes those elements that were changed since proposal.

TABLE 2—CHANGES TO REPORTING REQUIREMENTS

Data element	Change/revision	Original citation	New or revised citation
Annual manufacturing capacity of facility as determined in Equation I–5.	Revised to report manufacturing capacity on a fab basis, rather than facility [1].	98.96(a)	NA.
The diameter of wafers manufactured at the facility.	Revised to report wafer size on a fab basis, rather than facility [1]	98.96(b)	NA.
Annual emissions of each F–GHG emitted from each process type for which your facility is required to calculate emissions as calculated in Equations I–6 and I–7.	Revised to apply only when default gas utilization rate and by-product formation rate procedures in 40 CFR 98.93(a) are used to calculate emissions. Revised so that requirement applies to "fab" instead of facility.	98.96(c)(1)	NA.
Annual emissions of each F–GHG emitted from each individual recipe (including those in a set of similar recipes) or process sub-type.	Removed requirement to report emissions by individual recipe (including those in a set of similar recipes). Revised so that requirement applies to "fab" instead of facility.	98.96(c)(2)	NA.
Emissions of N_2O emitted from each chemical vapor deposition process and from other N_2O using manufacturing processes as calculated in Equation I–10.	Revised to clarify that facilities report N_2O emitted from the aggregate of all chamber cleaning processes and from the aggregate of other N_2O-using manufacturing processes. Revised so that requirement applies to "fab" instead of facility.	98.96(c)(3)	NA.
Annual emissions of each F–GHG emitted from each fab when you use the procedures specified in 40 CFR 98.93(i).	Added reporting requirement in conjunction with the stack testing option.	NA	98.96(c)(5).
Data elements reported when you use factors for F–GHG process utilization and by-product formation rates other than the defaults provided in Tables I–3, I–4, I–5, I–6, and I–7 to this subpart and/or N_2O utilization factors other than the defaults provided in Table I–8 to subpart I.	Removed and reserved all of 98.96(f) because of changes to remove the use of recipe-specific gas utilization rates and by-product formation rates.	98.96(f)	NA.
Annual gas consumption for each F–GHG and N_2O as calculated in Equation I–11 of this subpart, including where your facility used less than 50 kg of a particular F–GHG or N_2O during the reporting year. For all F–GHGs and N_2O used at your facility for which you have not calculated emissions using Equations I–6, I–7, I–8, I–9, and I–10, the chemical name of the GHG used, the annual consumption of the gas, and a brief description of its use.	Changed to recordkeeping requirement. Revised so that requirement applies to "fab" instead of facility. Added applicable equation references for the stack testing option.	98.96(g)	98.97(k).

TABLE 2—CHANGES TO REPORTING REQUIREMENTS—Continued

Data element	Change/revision	Original citation	New or revised citation
All inputs used to calculate gas consumption in Equation I–11 for each F–GHG and N_2O used.	Changed to recordkeeping requirement	98.96(h)	98.97(k)(1).
Disbursements for each F–GHG and N_2O during the reporting year, as calculated using Equation I–12.	Changed to recordkeeping requirement	98.96(i)	98.97(n).
All inputs used to calculate disbursements for each F–GHG and N_2O used in Equation I–12 including all facility-wide gas-specific heel factors used for each F–GHG and N_2O.	Change to recordkeeping requirement	98.96(j)	98.97(n).
Annual amount of each F–GHG consumed for each recipe, process sub-type, or process type, as appropriate, and the annual amount of N_2O consumed for each chemical vapor deposition and other electronics manufacturing production processes, as calculated using Equation I–13.	Changed to recordkeeping requirement. Removed "recipe-specific" requirements. Revised to refer to the annual amount of N_2O consumed for the aggregate of all CVD processes and for the aggregate of all other electronics manufacturing production processes [1].	98.96(k)	98.97(m).
All apportioning factors used to apportion F–GHG and N_2O consumption.	Changed to recordkeeping requirement	98.96(l)	98.97(c)(1).
Identification of the quantifiable metric used in your facility-specific engineering model to apportion gas consumption, and an indication if direct measurements were used in addition to, or instead of, a quantifiable metric.	Corrected citation and revised to indicate whether direct measurements used.	98.96(m)(i)	98.96(m)(1).
Start and end dates selected under 40 CFR 98.94(c)(2)(i).	Corrected citation	98.96(m)(ii)	98.96(m)(2).
Certification that the gases you selected under 40 CFR 98.94(c)(2)(ii) correspond to the largest quantities consumed on a mass basis, at your facility in the reporting year for the plasma etching process type and the chamber cleaning process type.	Corrected citation	98.96(m)(iii)	98.96(m)(3).
The result of the calculation comparing the actual and modeled gas consumption under 40 CFR 98.94(c)(2)(iii).	Corrected citation and revised to refer to modeled gas consumption under 40 CFR 98.94(c)(2)(iii) and (iv), as applicable.	98.96(m)(iv)	98.96(m)(4).
If you are required to apportion F–GHG consumption between fabs, certification that the gases you selected under 40 CFR 98.94(c)(2)(ii) correspond to the largest quantities consumed on a mass basis, of F–GHG used at your facility during the reporting year for which you are required to apportion.	Added requirement	NA	98.96(m)(5).
Fraction of each F–GHG or N_2O fed into recipe, process sub-type, or process type that is fed into tools connected to abatement systems.	Moved to recordkeeping, and removed recipe-specific references.	98.96(n)	98.97(o).
Fraction of each F–GHG or N_2O destroyed or removed in abatement systems connected to process tools where recipe, process sub-type, or process type j is used, as well as all inputs and calculations used to determine the inputs for Equation I–14.	Moved to recordkeeping, removed recipe-specific references, and revised to apply to the stack testing option.	98.96(o)	98.97(p).

TABLE 2—CHANGES TO REPORTING REQUIREMENTS—Continued

Data element	Change/revision	Original citation	New or revised citation
Inventory and description of all abatement systems through which F–GHGs or N_2O flow at your facility, including the number of systems of each manufacturer, model numbers, manufacturer claimed F–GHG and N_2O destruction or removal efficiencies, if any, and records of destruction or removal efficiency measurements over their in-use lives. The inventory of abatement systems must describe the tools with model numbers and the recipe(s), process sub-type, or process type for which these systems treat exhaust.	Revised the inventory to include only those systems for which the facility is claiming F–GHG or N_2O destruction or removal. Revised to report only (1) the number of devices controlling emissions for each process type, for each gas used in that process for which control credit is being taken; and (2) the basis of the DRE being used (default or site specific testing) for each process type and for each gas.		
	Revised to not require reporting the model number of the tools associated with each abatement system, and to remove the recipe-specific references.	98.96(p)	NA.
Certification that each abatement system is installed, maintained, and operated according to manufacturer recommendations and specifications. All inputs to abatement system uptime calculations, the default or measured DRE used for each abatement system, and the description of the calculations and inputs used to calculate class averages for measured DRE values.	The certification is revised to include that all systems are installed, maintained, and operated according to the site operation and maintenance plan for abatement systems, including documentation where the process deviates from the manufacturer's recommendations and specifications, and an explanation of why the deviation does not have a negative effect on system performance [1].	98.96(q)	98.97(d)
	All inputs to abatement system uptime calculations, the default or measured DRE used for each abatement system, and the description of the calculations and inputs used to calculate class averages for measured DRE values moved to recordkeeping in 98.97(d). In place of reporting the information and data on uptime and DRE calculations for abatement systems, the reporter must calculate and report an effective fab-wide DRE, as required in 98.96(r).		
Inputs to the F–HTF mass balance equation, Equation I–16, for each F–HTF.	Changed to recordkeeping	98.96(r)	98.97(r).
An effective fab-wide DRE calculated using Equation I–26, I–27, and I–28, as appropriate.	Added requirement [1]	NA	98.96(r).
Estimates of missing data where missing data procedures were used to estimate inputs into the F–HTF mass balance equation under 40 CFR 98.95(b).	Changed to recordkeeping	98.96(s)	98.97(s).
A brief description of each "best available monitoring method" used according to 40 CFR 98.94(a), the parameter measured or estimated using the method, and the time period during which the "best available monitoring method" was used.	Removed requirement	98.96(t)	NA.
For reporting year 2012 only, the date on which you began monitoring emissions of F–HTF whose vapor pressure falls below 1 mm of Hg absolute at 25 degrees C.	Removed requirement	98.96(v)	NA.
The date of any stack testing conducted during the reporting year, and the identity of the stack tested.	Added requirement in conjunction with stack testing option	NA	98.96(w)(1).
An inventory of all stacks from which process F–GHGs are emitted. For each stack system, indicated whether the stack is among those for which stack testing was performed as per 40 CFR 98.3(i)(3) or not performed per 40 CFR 98.93(i)(2).	Added requirement in conjunction with stack testing option	NA	98.96(w)(2).
If emissions reported under 40 CFR 98.96(c) include emissions from research and development activities, the approximate percentage of total GHG emissions that are attributable to research and development activities.	Added requirement	NA	98.96(x).

TABLE 2—CHANGES TO REPORTING REQUIREMENTS—Continued

Data element	Change/revision	Original citation	New or revised citation
If your semiconductor manufacturing facility emits more than 40,000 $mtCO_2e$, a triennial technology assessment report that includes information such as how gases and technologies have changed, the effect on emissions of the implementation of new process technologies, and default utilization and by-product formation rates collected in the previous 3 years.	Added requirement	NA	98.96(y).

NA—Not applicable.
[1] Data element revised from proposed rule (77 FR 635380, October 16, 2012).

The EPA is amending subpart I such that, with the addition of certain new data elements, several previous data reporting elements are not required to be reported to the EPA and, instead, are to be kept as records, as proposed.[3] These records must be made available to the EPA for review upon request.

The EPA is amending subpart I to add a stack testing option and to revise the method that uses default gas utilization rates and by-product formation rates. The stack testing approach involves the development of fab-specific emission factors in terms of kg of F–GHG emitted per kg of F–GHG consumed based on measured stack emissions. Using this approach, facilities are required to monitor and keep records of the fab-specific emission factor, the amount of each F–GHG consumed, and data on the operating time and performance of abatement systems, but they are not required to report these data. Other data needed to determine the amount of F–GHG used in a process type or sub-type are not reported, but rather kept as records. The EPA has also included additional recordkeeping requirements in 40 CFR 98.97 to verify compliance with the factors that trigger a retest, including the identity and total annual consumption of each gas identified as an intermittent, low-use F–GHG, and the total number of tools at each stack in the fab.

The final amendments to the default gas utilization rate and by-product formation rate approach require facilities to monitor and keep records of the amount of each F–GHG consumed in each process type and sub-type, and data on the operating time and performance of abatement systems, but do not require facilities to report these data.

The final amendments to the reporting requirements move the information on the number and DRE of abatement systems at each facility from the reporting requirements to the recordkeeping requirements as proposed. In order to determine the extent to which GHG emissions from this category are being abated, we are including in 40 CFR 98.96(r) a requirement for reporters to calculate and report effective fab-wide DRE factors for the emissions from the electronics manufacturing processes at each fab. In the October 16, 2012 proposed amendments to subpart I, the EPA proposed to require facilities to report facility-wide DRE factors in order to assist in our verification of reported GHG emissions (77 FR 63569). Following proposal, the EPA determined that because facilities are already collecting information to determine emissions on a fab-level basis using either the methods in 40 CFR 98.93(a), (b), or (i), a fab-wide DRE factor (instead of facility-wide) is more appropriate to ascertain the extent to which GHGs are being abated. The fab-wide DRE factor is calculated as 1 minus the ratio of reported emissions to the emissions that would occur if there were no abatement. The emissions are already reported under subpart A and subpart I.

For calculating the effective fab-wide DRE factors, reporters have two methods for calculating emissions that would occur if there were no abatement. The first method is used to calculate the emissions without abatement in cases where the reporter calculated emissions using default utilization and by-product formation rates. This includes cases in which the reporter calculated emissions under 40 CFR 98.93(a) and also those emissions that were calculated for stack systems that are exempt from testing, under 40 CFR 98.93(i)(3). In this method, emissions without abatement are calculated using the consumption of each F–GHG and N_2O in each process type or sub-type, and the default gas utilization rates and by-product formation rates in Tables I–3 to I–8, and I–11 to I–15 of subpart I. This calculation does not require reporters to collect any additional information because the information on F–GHG and N_2O consumption is already required to perform the calculations needed to estimate emissions using either the revised default emission factor approach or the stack testing option. This reporting requirement, 40 CFR 98.96(r), requires a calculation with these existing data, including the current reported emissions and the emissions that would occur if there were no abatement. The latter must be calculated using the consumption of each F–GHG and N_2O in each process type or sub-type and the appropriate default gas utilization rates and by-product formation rates in Tables I–3 to I–8 and I–11 to I–15 of subpart I.

The second method is used to calculate the emissions without abatement from stack systems in cases where the reporter calculated emissions based on stack testing conducted according to 40 CFR 98.93(i)(4). In this method, reporters must calculate emissions without abatement from the reported GHG emissions using the inverse of the DRE and the fraction of each gas in each process type that is abated. This method uses default values or values that are already measured and used in the equations that a reporter uses to calculate GHG emissions in the stack testing option.

In this notice we are also finalizing changes, as proposed, to Table A–7 of subpart A, General Provisions. Table A–7 lists those data elements for which the reporting date has been deferred to March 31, 2015 for the 2011 to 2013

[3] These reporting elements include data elements that have been designated as ''inputs to emissions equations'' in the August 25, 2011 final rul titled, ''Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule'' (76 FR 53057), and listed in Table A-7 of subpart A. Consistent with the final amendments to subpart I, we are removing these subpart I inputs to emissions equations data elements from table A-7 so that they are not required to be reported by March 31, 2015. More information on this final change can be found in Section III of this preamble.

reporting years. We are revising Table A–7 for the rows specific to subpart I to remove the references to those data elements described in Table 4 of this preamble that are moved from reporting in 40 CFR 98.96 to recordkeeping under 40 CFR 98.97, or that are removed entirely from subpart I because of the removal of the relevant emission calculation requirement. Since these data elements were originally deferred until 2015 and reporters are no longer required to report these data elements after January 1, 2014, this final rule revises these data elements from reporting requirements to recordkeeping requirements for 2011, 2012, and 2013, as well as 2014 and beyond. Reporters are still required to maintain records of these data elements according to the procedures outlined in 98.97.

14. Changes To Remove BAMM Provisions and Language Specific to Reporting Years 2011, 2012, and 2013

We are removing the provisions in 40 CFR 98.94(a) for best available monitoring methods (BAMM), as proposed. The requirements of 40 CFR 98.94(a)(1) through (a)(3) provide an option for reporters to request and use BAMM for calendar year 2011 reporting for monitoring parameters that cannot be reasonably measured according to the monitoring and quality assurance/quality control (QA/QC) methods provided in subpart I. The provisions require that, starting no later than January 1, 2012, the reporter must discontinue using BAMM and begin following all applicable monitoring and QA/QC requirements of this part, unless the EPA has approved the use of BAMM beyond 2011 under 40 CFR 98.98(a)(4).

As discussed in Section I.D of this preamble, these amendments will become effective on January 1, 2014. Facilities are required to follow one of the new methods to estimate emissions beginning in 2014, submitting the first reports of emissions estimated using the new methods in 2015. The BAMM provisions of 40 CFR 98.94(a) will be outdated on the effective date. The provisions of 40 CFR 98.94(a)(1) to (a)(3) are limited to 2011, and the deadline for requesting an extension under 40 CFR 98.94(a)(4) also occurred in 2011. Therefore, we are removing all the BAMM provisions in the current subpart I, because they will no longer be applicable starting in 2014, which is when this final rule will be effective. We are not promulgating any new BAMM provisions because we expect that all facilities will be in compliance with the monitoring and QA/QC methods required under subpart I for the 2014 calendar year.

We are also removing 40 CFR 98.93(h)(2), as proposed, which provided an option for reporters to calculate and report emissions of fluorinated heat transfer fluids using select time periods in 2012, and the corresponding reporting requirement at 40 CFR 98.96(v). In addition, we are removing language in 40 CFR 98.94(h)(3) that is specific to the monitoring of fluorinated heat transfer fluids in 2012. These provisions will no longer be applicable on the effective date of these final amendments, since both data elements are specific to 2012.

B. Responses to Major Comments Submitted on the Electronics Manufacturing Source Category

This section contains a brief summary of the major comments and responses on the proposed changes to the final subpart I rule. The EPA received comments on the proposed changes from the SIA, five semiconductor manufacturers (GlobalFoundries, IBM, Intel, Samsung, and Texas Instruments), and Environmental Defense Fund (an environmental advocacy group).

A summary of all of the comments and the responses thereto that are not included in this preamble can be found in the document, ''Reporting of Greenhouse Gases—Technical Revisions to the Electronics Manufacturing Category of the Greenhouse Gas Reporting Rule: EPA's Responses to Public Comments'' (see EPA–HQ–OAR–2011–0028).

1. Stack Testing as an Alternative Emission Monitoring Method for Facilities That Manufacture Electronics

Comment: One commenter could not duplicate the EPA's calculation for all of the Tier 2a emission factors in Tables I–11 and I–12 of subpart I that are to be used to screen which stacks are to be tested under the stack testing alternative, and for calculating emissions from certain low-emitting stacks in that alternative. Based on their review of the EPA's explanation of how the factors in Tables I–11 and I–12 of subpart I were derived (see EPA–HQ–OAR–2011–0028–0090), the commenter recommended the following changes for the final amendments to subpart I:

- EPA should continue to use the default factors by process type and process sub-type in Tables I–3 and I–4 of subpart I, or the underlying data, as the starting point for the derivation of the simpler factors in Tables I–11 and I–12 of subpart I. To the extent the factors in Tables I–3 and I–4 are updated between proposal and final rulemaking, those updated factors should be used to update the factors in Tables I–11 and I–12.
- The commenter noted that the EPA used the arithmetic averages of the different process specific factors when deriving the factors in Tables I–11 and I–12 of subpart I. The commenter stated that weighting the individual factors for each process type by the amount of gas used in that process type is technically more appropriate than sample weighting (i.e., taking the arithmetic average of all the data points for that gas and process type). The commenter encouraged the EPA to re-compute the Table I–11 and I–12 factors with gas-use weighting. Where gas use information is not available, the commenter noted that sample weighting of available emission factor data would be acceptable.
- The commenter recommended that the EPA should revise the nitrogen trifluoride (NF_3) emission factors to give proper weighting to the emissions factor for remote clean, which represents the largest use of NF_3.

Response: The EPA agrees with the commenter that the factors in Tables I–11 and I–12 of subpart I should be updated in light of the additional emission factor data received during the public comment period for the proposed amendments to subpart I. The EPA also agrees with the commenter that gas-use weighting is more appropriate than sample-weighted averaging in developing the revised Tier 2a factors. Therefore, the EPA is promulgating revised Tier 2a factors in Tables I–11 and I–12 using gas consumption-weighted averages where consumption data were available (see Docket Id. No. EPA–HQ–OAR–2008–0028–0090) and sample weighted averages where gas use information was not available. The EPA is also updating the NF_3 emission factor to give proper weighting to the emissions factor for remote clean, which, as the commenter notes, represents the largest use of NF_3.

Comment: One commenter noted that some facilities may not be able to comply with the proposed requirements in 40 CFR 98.93(i)(1)(ii) and (iii) which require reporters to use data from the previous reporting year to estimate the consumption of input gas and total uptime of all abatement systems. For example, a new facility or a facility that just crossed the reporting threshold will not have data from a ''prior reporting year'' for estimating gas consumption and abatement system uptime. The commenter recommended that both 40 CFR 98.93(i)(1)(ii) and (iii) be revised to allow a facility, where a previous reporting year's data are not available, to estimate annual gas usage and abatement system uptime based on

representative operating data from a previous period covering 30 days or more.

Response: The EPA agrees with the commenter that instances will occur where there will be no data from a prior reporting year available. As a result, the EPA is including in the final amendments to subpart I, the commenter's suggested changes to 40 CFR 98.93(i)(1)(ii) and (iii) to allow a facility to estimate annual gas usage and abatement system uptime based on representative operating data from a period covering 30 days or more, when data from a prior reporting year are not available, with the exception that the option is only available for a fab that did not report in the previous reporting year. If there is an anticipated change in activity for the fab (i.e., in an increase or decrease in the annual consumption or emissions of any F–GHG) greater than 10 percent for the current reporting year compared to the previous reporting year, reporters are required to identify and account for the change in their preliminary estimate. Reporters must use a quantifiable metric (e.g., the ratio of the number tools that are expected to be vented to the stack system in the current year as compared to the previous reporting year), engineering judgment, or other industry standard practice.

The EPA has determined that this exception is necessary so that any fab that collected and reported data in the previous reporting year is required to estimate consumption and uptime based on the data from the previous reporting year. Recognizing that the previous reporting year may not represent a complete year (i.e., the fab may have started operations during the previous year), partial data from the prior year may be used if the reporter accounts for changes in activity. The EPA established activity changes that are greater than 10 percent for the current reporting year compared to the previous reporting year, because it is the same threshold criterion for conducting a re-test under the stack test method, as discussed in Section II.A.1 of this preamble.

Comment: One commenter requested that the EPA include ASTM D6348–03, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' in subpart I as an alternative to EPA Method 320. The commenter stated that the ASTM method is more straight-forward than EPA Method 320 and, as such, is easier to understand/implement. The commenter stated that EPA Method 320 requires performing a validation of 12 spiked/unspiked pairs in addition to the three Quality Assurance (QA) spikes whereas ASTM D6348–03 requires only three analyte spikes to demonstrate acceptable performance. The commenter noted that when using the ASTM method one loses the ability to generate compound-specific correction factors should the system not sufficiently recover the analytes. The commenter indicated that using the ASTM method will save time during collection and data processing. The QA spike procedure and recovery requirements for EPA Method 320 and ASTM D6348–03 are essentially the same. In both methods, one cannot spike at more than 10 percent of the extracted flow rate and must demonstrate recoveries within 30 percent of expected amounts, respectively.

The commenter stated that testing companies have collected data using the ASTM method. The commenter noted that although none of these data involved F–GHG measurements at semiconductor facilities, the ASTM method has been successfully used in semiconductor fabs for other determinations (e.g., hazardous air pollutants) and was used in Intel stack testing for F–GHG emissions conducted in 2011 to support rule development. The commenter also noted that several existing EPA regulations list both EPA Method 320 and ASTM D6348–03 as acceptable methods: The Reciprocating Internal Combustion Engines (RICE) Maximum Achievable Control Technology (MACT) (40 CFR part 63 subpart ZZZZ) and the Turbine MACT (40 CFR part 63 subpart YYYY) list both methods.

Response: We agree with the commenter that ASTM D6348–03 is an acceptable method and are including it in this final rule. At proposal the EPA stated that ASTM D6348–03 had been reviewed as a potential alternative to EPA Method 320 (77 FR 63575). In the preamble to the proposed amendments, the EPA stated, ''All data and information EPA has received in support of the stack testing method used EPA Method 320. Since this industry contains specialized gases in low concentrations, EPA would prefer to have supporting data prior to approving another test method. Because of this, we are not proposing this standard as an acceptable alternative for EPA Method 320 in this proposed rule.''

Since this rule was proposed, we have revisited this assessment based on the comments received. We acknowledge that several existing regulations list both EPA Method 320 and ASTM D6348–03 as acceptable methods, as noted by the commenter. We also acknowledge the efficiency of ASTM D6348–03 as compared to EPA Method 320, although it may pose a greater risk for the need to perform a retest, as discussed below in this response. However, ASTM D6348–03 is also ''self-validating,'' as is EPA Method 320, and contains quality assurance procedures that, when adhered to, provide an acceptable level of confidence in the measured concentrations. For these reasons, along with the additional information provided in the comment on testing conducted in semiconductor facilities, we are allowing in the final rule amendments the use of ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, as an alternative to EPA Method 320 with the following requirements:

(1) The test plan preparation and implementation in the Annexes to ASTM D6348–03, Sections A1 through A8 are mandatory; and

(2) In ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent recovery (%R) must be determined for each target analyte (Equation A5.5).

The reporter must also follow Section 4.1 of ASTM D6348–03 to ensure the F–GHG remains in the gas phase. In order for the test data to be acceptable for a compound, the percent recovery must be between 70 and 130 percent. If the percent recovery does not meet this criterion for a target compound, the test data are not acceptable for that compound and the test must be repeated for that analyte (i.e., the sampling and/or analytical procedure should be adjusted before a retest). The percent recovery value for each compound must be reported in the test report, required under 40 CFR 98.94(j)(4), and all field measurements must be corrected with the calculated percent recovery value for that compound by using the following equation:

Reported result = measured concentration in the stack × (100/%R).

As noted by the commenter, the use of ASTM D6348–03 could result in the loss of the ability to generate compound-specific correction factors if the system does not sufficiently recover the analytes (i.e., the percent recovery value is not between 70 and 130 percent). In this case, the testing facility would be required to perform a retest for the target analyte. Therefore, although the use of ASTM D6348–03 provides some efficiency, facilities must assume this risk when using the ASTM method.

Comment: One commenter noted that a facility may choose to report emissions as equal to consumption for a gas if consumption of that gas is less

than 50 kg per year in a fab, if using the default emission factor method, as specified in 40 CFR 98.93(a). The commenter asserted that, under the stack testing alternative, a facility should also not be required to test for a gas that is not one of the listed ''expected by-products'' if consumption of that gas is less than 50 kg per year in a fab. To ensure clarity on this point, the commenter requested that the EPA modify 40 CFR 98.93(a) to state that, if a fab uses less than 50 kg of a F–GHG in one reporting year, the reporter may calculate emissions as equal to the fab's annual consumption for that specific gas as calculated in Equation I–11 of subpart I. If this is done and the stack testing method under 40 CFR 98.94(j) is used, the commenter stated that testing for the gas should not be required unless it is one of the expected by-products.

Response: In the proposed rule, EPA neglected to update 40 CFR 98.93(a) to clarify that the provision allowing fabs to calculate emissions as equal to consumption if their fab consumes less than 50 kg of a F–GHG only applies to facilities using the estimation methods in 40 CFR 98.93(a)(1) and (a)(2). For the stack testing method, our intent at proposal was to minimize the burden by providing reporters a method to calculate emissions of F–GHGs used in small quantities that was similar but not equal to that of the provisions under the default emission factor method for gases consumed in quantities of less than 50 kg. To achieve this burden reduction, we proposed provisions for intermittent low-use gases at 40 CFR 98.93(i)(4)(i). Additionally, we specified under 40 CFR 98.94(j)(1)(ii) of the proposed amendments, ''you must measure for . . . those fluorinated GHGs used as input fluorinated GHG in process tools vented to the stack system, except for any intermittent low-use fluorinated GHG as defined in § 98.98.'' We did not intend for the provisions under 40 CFR 98.93(a) regarding input gases consumed in quantities less than 50 kg per reporting year to apply to fabs using the stack testing method because they would have been duplicative of the provisions for intermittent low-use gases specified at 40 CFR 98.93(i)(4)(i).

To clarify that reporters may only calculate emissions as equal to consumption if their fab consumes less than 50 kg of a F–GHG in one reporting year and they are using default emission factors for that fab, we have moved the provision from 40 CFR 98.93(a) and placed it in 40 CFR 98.93(a)(1) and (a)(2). We have also clarified the provision by specifying that the reporter must also include any by-product emissions of the gas as calculated in 40 CFR 98.93(a).

Additionally, in our review of the emissions estimation requirements for intermittent low-use gases for facilities using the stack testing method in 40 CFR 98.93(i), we have determined that in some cases, a facility may use an intermittent low-use gas that does not have associated default gas utilization and by-product formation rates in Tables I–11 through I–15. For example, if a facility uses C_4F_8O in manufacturing semiconductors on 300 mm wafers, Table I–12 of subpart I does not have applicable default utilization and by-product formation rate factors. For these cases, we have included a provision in 40 CFR 98.93(i)(4) for facilities to calculate emissions of these gases by assuming utilization and by-product formation rates of zero for those gases. Facilities will also account for abatement of these gases, if abatement systems are present on the tools associated with those stacks.

Comment: Two commenters questioned the applicability of the definition of the time interval in Equations I–17 and I–18 at 40 CFR 98.93(i)(3)(ii), which specifies that ''each time interval in the sampling period must be less than or equal to 60 minutes (for example an 8 hour sampling period would consist of at least 8 time intervals).'' One commenter observed that the sum of the average concentrations in Equations I–17 and I–18 are numerically equivalent whether the minimum time interval is one hour or one minute. The commenters requested that the requirement for minimum time intervals (t_m) over the duration of the 8-hour (minimum) stack test either be removed entirely, or be made specific to the use of the FTIR method.

The commenters further explained that when the FTIR method is used, the sampling period time intervals are typically on the order of minutes, and so the requirement for a minimum of a 60 minute time interval is easily achieved. However, in the future GC–MS or similar types of appropriately validated methods may be used that collect composite samples continuously over the 8-hour sampling period. In these situations, the EPA requirement as currently worded would obligate the sampling technician to collect a minimum of 8 one-hour time-integrated samples. The commenters contended that such an obligation would be excessive, and would provide little benefit because the 8-hour composite sample itself provides an appropriate average.

The commenters requested that 40 CFR 98.93(i)(3)(ii) either delete the requirement for a minimum time interval, or make it specific to the FTIR method, by specifying that each time interval in an FTIR sampling period must be less than or equal to 60 minutes (for example an 8-hour sampling period would consist of at least 8 time intervals). Another commenter recommended that the language in the final rule be revised to allow for continuous 8-hour testing rather than 8 individual one-hour runs.

Response: The EPA agrees with comments regarding sampling times when using the stack test option. The EPA recognizes that in typical FTIR sampling, which is the method incorporated into the proposed use of EPA Method 320, the sampling period time intervals are typically on the order of minutes; however, instead of specifying a potentially restrictive sampling period (i.e., a 1 minute basis), the EPA chose to allow facilities and their testing contractors to decide the most appropriate sampling period. Additionally, the EPA's intention was to require facilities to collect concentration measurement data that were representative of the entire 8-hour (or more) sampling period. As a result, the EPA proposed that concentration measurement data be collected, at a minimum, on an hourly basis. The EPA agrees with the commenter that, if a composite sampling method was used to conduct stack testing, either through the use of an approved alternative method or through future rule amendments, the requirement to collect a minimum of 8 one-hour time integrated samples would not apply since the composite sample itself would provide a time integrated sample. As a result, the EPA is incorporating the commenters' suggested revision to 40 CFR 98.93(i)(3)(ii). However, the EPA notes that the GC/MS method is not an approved method in this final rule and thus any reporter preferring to use that method would need to follow the procedures found in 40 CFR 98.94(k).

Comment: Two commenters expressed concern with the requirement to certify that no changes in stack flow configuration occur between tests conducted for any particular fab in a reporting year. The commenters recognized that it is important to ensure that the system is relatively static over the course of a round of testing, but stated that a certification of ''no changes'' goes beyond what is necessary and reasonable. The commenters noted that a fab may readily be able to certify that no significant changes have occurred over the relatively short time

required to complete the consecutive testing of multiple stacks. However, a facility may not be able to certify that no changes occurred during testing because one or more process tools might have been added to or subtracted from a stack system during that time period because, as part of normal operation, a process tool might be disconnected or added during a week of testing, but such an action should not invalidate the test. Such an action would not cause a significant change in emissions, since a single process tool (or small number of them) would represent a small fraction of the total. The commenter stated that, in addition, there is typically a time lag between the time a process tool connection is made and the time the process tool is up to full production and emissions.

The commenters proposed that the certification criterion in 40 CFR 98.94(j)(1)(iv) be modified so that reporters must identify any changes that occurred over the course of testing, including any GHG emitting process tools newly connected to or disconnected from the system. The reporter must also certify that no process tools that were in operation at the start of the test period have been moved to a different stack during the test period and that no point-of-use abatement systems on active process tools have been permanently removed from service during the test period.

Response: The EPA agrees with the commenters' suggestions regarding stack flow configuration certification requirements. Our original intent of requiring reporters to certify that no changes in stack flow configuration occur between tests was to ensure that emission factors developed as a result of testing are representative of normal operations, and to avoid under or over reporting of emissions as a result of reporters directing emissions from one stack to another stack between testing of separate stack systems, or by taking process tools with lower utilization efficiencies offline during testing.

Based on the information provided by the commenters, the EPA agrees that the addition and removal of a limited number of process tools to a stack system is a common occurrence under normal operating conditions. As a result, we are revising the certification requirement under 40 CFR 98.94(j)(1)(iv) to require reporters to certify that no significant changes in stack flow configuration occur between tests conducted for any particular fab in a reporting year. Specifically, reporters must certify that no more than 10 percent of the total number of F–GHG or N_2O emitting process tools are connected or disconnected from a stack system during testing. Although the commenters did not provide a quantitative limit when referring to ''a small fraction of the total,'' we determined that it is necessary to limit the number of tools connected or disconnected to a single stack system during testing to ensure there are no significant changes in emissions. Additionally, we agree with the commenters' suggestion to require reporters to certify that no process tools that were in operation at the start of the test period have been moved to a different stack during the test period, and that no point of use abatement systems have been permanently removed from service during the test period. We also agree with the commenters that any changes during the test period must be identified. Therefore, we are requiring reporters to document and record such changes in the emissions test data and report required under 40 CFR 98.97(i)(3).

Comment: Two commenters requested that the final rule include a specific list of by-products that are to be included in the testing instead of the requirement for a facility-specific analysis of ''expected'' or ''possible'' by products for each series of tests. This approach would eliminate uncertainty for the facility that the analysis was sufficient for purposes of the rule. The commenter noted that the EPA suggested a list of six chemicals that would be treated as potential by-products: CF_4, C_2F_6, CHF_3, C_3F_8, C_4F_6, and C_4F_8 (77 FR 63546). The commenter stated that the latest round of data gathering also found CH_2F_2, CH_3F, and C_5F_8 as by-products in some instances. The commenter recommended that these three gases be added to the list of ''possible'' by-product gases to be tested for under the stack test alternative. The commenter further recommended that the list of ''expected'' by-product gases, that will be assumed to be present at half the FDL even if they are not detected, be limited to the five C1 and C2 compounds (CF_4, C_2F_6, CHF_3, CH_2F_2, and CH_3F) because the four C3, C4 and C5 by-products (C_3F_8, C_4F_6, c-C_4F_8 and C_5F_8) were found in only a handful of tests. The commenter stated that the four ''possible'' by-products would be tested for and, if detected, they would be reported as detected and at half the FDL for any interval in that round of testing where they are not detected. If not detected, they would be reported as zero.

A third commenter supported the EPA's proposal to require that all fabs using the stack testing method test for the most common six by-product gases (CF_4, C_2F_6, C_3F_8, C_4F_6, C_4F_8, and CHF_3). The commenter supported the EPA's rationale that the cost of testing for six, as opposed to two, of these gases is expected to be low, because the tests would be conducted at the same time, with the same equipment and personnel.

Response: The EPA agrees with the commenters' suggestion to designate specific F–GHGs as ''expected'' and ''possible'' by-products. In the final rule, we are adding Table I–17, which includes a list of expected by-products and a list of possible by-products. Facilities are required to test for both expected and possible by-products. If expected by-products are not detected during a round of testing, facilities are required to assume that they are emitted at one-half of the FDL. If possible by-products are not detected during a round of testing, facilities are required to equate their emissions to zero for that round of testing.

This approach simplifies the rule, provides certainty for purposes of implementation, and relieves facilities of the burden of determining which by-products should be tested for or assumed to be emitted if they are not detected. By establishing a comprehensive list of by-products to include in testing, it also avoids routine underestimates of emissions that could result if a facility did not test for a by-product that was in fact emitted.

We agree with the commenter's suggestion to add CHF_3, CH_2F_2, and CH_3F to the list of expected by-products. With these additions, the list of expected by-products includes CF_4, C_2F_6, CHF_3, CH_2F_2, and CH_3F. Based on all the emission factor data available to the EPA, CF_4 was identified as a by-product in 532 instances, C_2F_6 in 589 instances, CHF_3 in 297, CH_2F_2 in 21, and CH_3F in seven instances out of a total of 1,149 data sets.

The EPA also agrees with the commenters' recommendation to include the four C3 to C5 compounds (C_3F_8, C_4F_6, c-C_4F_8 and C_5F_8) in the list of ''possible'' by-products in the final rule. Based on all the emission factor data available to the EPA, C_3F_8 was identified in four instances, C_4F_6 in three, c-C_4F_8 in five, and C_5F_8 in four of 1,149 data sets.

Comment: Three commenters asserted that the maximum FDL values in Table I–10 of the proposed amendments to subpart I have been achieved in very limited circumstances with specifically enhanced FTIR measurement systems. The commenters stated that the FDLs are not achievable with conventional FTIR systems in normal usage. The commenters noted that stack testing at

three fabs was completed in support of the testing alternative and the emissions reports appear in the docket and that the proposed maximum FDLs were not always met. The commenters noted that when the proposed maximum FDLs were met, it was with customized enhanced measurement systems. The commenters stated that these maximum FDLs should be either dropped from the rule or raised substantially. The commenters asserted that if they are not removed or raised, the number of available testing contractors and equipment will be severely limited. If the maximum FDLs are not met during a test and the test results are consequently considered invalid, very expensive efforts and arrangements for data gathering will be wasted. In light of these concerns, the commenters recommended that the maximum FDLs be increased by a factor of five. With that change, the fully fluorinated gases would have a maximum FDL of 25 ppbv, SF6 would have a maximum FDL of 5 ppbv, and other F–GHG would have a maximum FDL of 50 ppbv. These values would be considered maximum allowable FDLs. However, if stack testing at a site achieves lower FDLs, the lower FDLs determined for that stack test would be used for estimating emissions of expected, but not detected gases.

The commenters stated that allowing facilities to use higher FDLs would not affect testing results in a significant way. One commenter provided a comparison of emissions based on stack test results by Intel, International Business Machines (IBM) and Texas Instruments Incorporated (TI) using different FDL assumptions (Docket ID. No EPA–HQ–OAR–2011–0028–0095). The commenter asserted that, based on their analysis, the impact when accounting for five expected C1 and C2 by-products is minor and does not change appreciably for the higher FDLs except in the case of one facility that had very low concentrations in the stacks resulting from the fact that facility's tools are fully abated.

One commenter supported the proposed maximum FDLs, and agreed that FDLs should be lower for F–GHGs with higher GWPs.

Response: The EPA acknowledges the industry commenters' concerns with respect to the proposed maximum FDLs. The FDL is the lowest concentration at which at which an F–GHG can be detected during a specific field measurement. The maximum allowed FDL is the concentration at which an F–GHG should be detectable when the method is conducted properly and the analytical instruments are used correctly and of reasonable quality. Maximum FDLs are specified to ensure that the field measurements of F–GHG emissions are of adequate quality and accuracy, and that the fraction of total emissions that are below the FDL (and which have to be assumed to be one-half the FDL) is minimized. As discussed in the proposed amendments (77 FR 63547), EPA Method 320 requires the specification of maximum FDLs because the FDLs achieved by a method and analytical instruments can have a significant impact on the quality of the measurements. Maximum FDLs are necessary because if the FDL for a F–GHG is too high, it may capture a relatively large fraction of the fab's emissions of that F–GHG may occur at concentrations that are lower than what is detectable by the instrumentation. This results in the uncertainty of the emission estimates being correspondingly high. Due to this fact, the proposed amendments required that facilities must use FDLs that are less than or equal to the maximum FDLs in Table I–10 to reduce the uncertainty associated with the emissions estimates under the stack test method. The maximum FDLs in the proposed amendments were based on FDLs achieved at three different semiconductor facilities and an analysis of the magnitude of the emissions that would occur (in CO_2e) at various possible maximum FDLs (see docket item EPA–HQ–OAR–2011–0028–0085, section 5.1.2). The proposed FDLs were generally, though not always, close to the average FDLs achieved across all three facilities that submitted FDL information to the EPA.

The EPA acknowledges the industry commenters' assertion that two of the three facilities that submitted information on FDLs (see IBM, Intel, and TI test reports in docket EPA–HQ–OAR–2011–0028) used enhanced FTIR technology during stack testing and that not all stack testing contractors have the capability to perform these enhanced FTIR measurements. The EPA re-analyzed the available information to assess the FDL levels that were achievable by the facilities using other accurate and well-maintained FTIR, including a facility that did not use enhanced FTIR. Upon review of the FDLs included in the three test reports, we determined that increasing the proposed FDLs by a factor of four increases the values to a level that should be consistently achievable by testers using FTIR equipment under EPA Method 320, even if the tester does not use enhanced FTIR techniques. At these levels (four times the proposed maximum FDLs), all of the three stack tests that were conducted in support of the proposed amendments comply with the final FDLs for each of the F–GHGs specified in Table I–10. In contrast, only two of the three facilities that submitted data would have been able to achieve FDLs that were equal to or lower than the proposed maximum FDLs. We anticipate that the FTIR equipment and techniques used by these three facilities are representative of what would be used by the field of reporters and represent accurate and well-maintained equipment and techniques in the industry. As a result, the EPA is promulgating revised FDL values in Table I–10 to subpart I that are equivalent to the proposed values multiplied by a factor of four. The EPA determined that it was not necessary to increase the maximum allowed FDLs by a factor of five, as suggested by the industry commenter, to establish levels that could be achieved by testing companies using EPA Method 320 because the analysis of data and information provided to EPA on this topic demonstrated that an increase by a factor of four represents the appropriate FDL values. The final FDLs achieve the necessary balance between achievable FDLs and minimum uncertainty in the emission measurements derived from stack testing.

The EPA appreciates the support of the one commenter for the proposed maximum FDLs. However, as explained earlier in this response, the maximum FDLs were revised since proposal to a level that better reflects the FDLs that can be achieved by testing companies using the methods included in the final rule. The EPA would also like to clarify that the maximum FDLs that were included in the proposed and final rule were based primarily on the technical achievability of those levels. The GWP of the corresponding gases was used only to determine the overall effect on emissions (in CO_2e) of the different maximum FDL, and it was observed that the achieved FDLs were lower for gases with higher GWPs that were also easier to detect (see EPA–HQ–OAQ–2011–0028–0085, section 5.1.2).

Comment: Two commenters supported the proposed provisions to allow facilities subject to Subpart I to use prior stack testing completed in support of rule development to establish initial emissions factors under the stack test alternative, as long as the tests were completed no earlier than the date 3 years before the date of publication of the final rule amendments. The commenters noted that stack testing at three facilities in support of the

proposed rule was completed in 2011. The commenters requested that the EPA clarify that all data collected during the calendar year 2011 regardless of the month that the final rule is published will meet the ''within 3-year'' criterion for pre-rule data collection.

One commenter further explained that for testing conducted prior to the final rule, a fab may not have collected all required data elements and/or may not have collected all data elements in a manner consistent with all criteria in the final rule, and abatement systems may not have been certified in the 2011 testing as specified in the final rule. As a result, the commenter requested that the final rule be explicit that a fab may use prior stack test data to set emissions factors under the stack test alternative if the key substantive requirements were met, any deviations from the final rule are reported to the EPA and the EPA provides concurrence with the use of the data. The commenter stated that in evaluating whether to accept the earlier test results, the EPA should exercise its discretion to allow the use of data recorded during earlier testing, even if the procedures used do not match exactly what appears as a requirement in the final rule.

Response: The EPA agrees with the commenter's suggestions regarding the use of data collected in calendar year 2011 in the stack testing alternative. In the final amendments to subpart I, under 40 CFR 98.94(j)(7), the EPA is clarifying that data collected on or after January 1, 2011 may be used in the relative standard deviation calculation in 40 CFR 98.94(j)(5)(ii) if the previous results were determined using a method meeting the requirements in paragraph 40 CFR 98.94(j)(2). The EPA is also allowing reporters to use data collected on or after January 1, 2011 but before January 1, 2014, using a method that did not meet all the requirements of 40 CFR 98.94(j), on a case-by-case basis, contingent on Administrator (or an authorized representative's) approval. Reporters would describe any deviations from the methods and provisions in the final rule and the EPA would review and approve or disapprove the use of those data in the stack testing alternative, according to a review procedure that is similar to that followed for review and approval of an alternative stack testing method specified in 40 CFR 98.94(k). However, this procedure does not require the use of EPA Method 301 to validate the prior test data. The EPA would retain the right to not approve the use of data that does not meet the data quality requirements in 40 CFR 98.94(j)(7). See 40 CFR 98.94(j)(7) for more details regarding the use of data collected prior to the promulgation of the final amendments in the relative standard deviation calculation.

Comment: One commenter asked the agency to reconsider its proposal to allow facilities to conduct multiple tests in a single year with the aim of demonstrating low variability and becoming exempt from annual testing. The commenter stated that given the magnitude and rate of change in the semiconductor industry, facilities should, at a minimum, be required to do annual tests for a period of 3 years before qualifying for an exemption of up to 5 years. The commenter expressed concern that the measured emission factors could be stable over a one-year period but not over a three-year period.

Response: The EPA agrees with the commenter that it is possible an emission factor determined from three tests in one year could be representative of a fab's emissions over a one-year period, but not over a three-year period. However, the types of factors that could affect the emissions over a three-year period, such that the emission factors developed from conducting three tests in one year are no longer representative, are likely to be the same types of factors that would trigger the requirements to perform a new test, as promulgated at 40 CFR 98.94(j)(8). Therefore, it is unlikely that a reporter could substantially change a facility in such a way that the emissions would change substantially without triggering the requirement to perform a retest.

If a facility is required to perform a re-test, the results of that test will not extend the date of the next scheduled test. If a facility is required to conduct a re-test, the facility must also use the data from the re-test and the two most recent previous stack tests to evaluate whether the facility still meets the criteria to skip annual testing. If the facility no longer meets those criteria, the facility must resume testing regardless of when the facility qualified to skip annual testing. The facility may perform annual testing or may perform multiple tests in a single year to collect sufficient new data to see if they again qualify to skip annual testing. Therefore, the option for facilities to perform multiple emissions tests within the same year would not allow facilities to use data that are not representative of current emissions, provided they adhere to the provisions in 40 CFR 98.94(j)(5).

Comment: One commenter agreed with the list of changes at a fab included in 40 CFR 98.94(j)(8) that trigger the requirement that a stack system be retested. The commenter suggested additional fab changes identified in the context of the triennial technology assessment report required under 40 CFR 98.96(y) that should also trigger retesting (e.g., implementation of new process technologies, introduction of new tool platforms, and introduction of new processes on existing platforms). Another commenter stated that potential new process technologies that would change the nature of the emissions of GHGs from semiconductor manufacturing would trigger one or more of the six triggers for retesting included in 40 CFR 98.94(j)(8). The second commenter predicted that the triggers that would most likely be affected by new process technologies would be the change in the consumption of a F–GHG by more than 10 percent of the total annual F–GHG consumption (in CO_2e), the change in the consumption of an intermittent low-use F–GHG, or a decrease by more than 10 percent in the fraction of process tools with abatement systems.

Response: Based on the comments on the proposal, the EPA has concluded that the re-test triggers that were proposed and promulgated under 40 CFR 98.94(j)(8) are adequate to capture changes in fab emissions as a result of new process technologies, new tool platforms, and new processes on existing platforms. These types of changes are already accounted for by the criteria that that are specified in 40 CFR 98.94(j)(8), and no new criteria have been added in the final rule. However, the EPA has included additional recordkeeping requirements in 40 CFR 98.97 to verify compliance with the factors that would trigger a retest. Specifically, we are revising 40 CFR 98.97(i)(3) to require records of the identity and total annual consumption of each gas identified as an intermittent low use F–GHG, to verify any change in the consumption of an intermittent low-use F–GHG that was not used during the emissions test and not reflected in the fab-specific emission factor, such that it no longer meets the definition of an intermittent low-use F–GHG. We are also adding a new provision at 40 CFR 98.97(i)(9) to require records of the total number of tools at each stack in the fab which, along with the number of abatement systems, is needed to verify if a facility has a decrease by more than 10 percent in the fraction of tools with abatement systems compared to the number during the most recent emissions test.

2. Revisions to the Default Gas Utilization Rates and By-Product Formation Rates for the Plasma Etch Process Category for Facilities That Manufacture Semiconductors

Comment: One commenter provided additional input on the merging of the default gas utilization and by-product formation rates for wafer clean and etch processes. The commenter provided data from industry publications for the total F–GHG usage for these processes. The commenter stated that wafer cleaning is between 0.8 and 2 percent of total 200 mm F–GHG usage. The commenter stated that five gases are used in 200 mm wafer cleaning. The commenter noted that four of the five gases are also used in 200 mm chamber cleaning and etch processes, and one gas is used in etch and wafer cleaning. The commenter asserted that because wafer cleaning is a low percentage of 200 mm F–GHG usage, combining wafer cleaning and etch processes will have a minor impact on the accuracy of the emissions estimates under Subpart I.

Response: The EPA proposed to combine the etch and wafer cleaning categories, which could reduce the apportioning required of a facility and potentially reduce gas apportioning errors if the facility uses the same F–GHGs for wafer cleaning and etch. Facilities using 150 mm and 200 mm wafers typically need to apportion three to five gases between the plasma etch and chamber cleaning process types/subtypes. As noted by the commenter, five gases are typically used in 200 mm wafer cleaning (C_2F_6, CF_4, CHF_3, NF_3, and SF_6) and each of these gases are also used in either the etch and/or chamber cleaning process types.

The effect of gas apportioning errors on GHG emissions accuracy depends upon the difficulty of the gas apportionment by gas and process type/subtype. For example, no apportionment error would be present for gases used only in one process and little apportionment error would result if only small portions of gas use are allocated to processes other than the dominant one. The overall impact of apportioning on the accuracy of the GHG estimate depends on each gas's GWP value and its contribution to the total fab emissions. As noted in the preamble to the proposed amendments to subpart I (77 FR 63552), the gases used for plasma etch and wafer clean have similar gas utilization rates and by-product formation rates. Furthermore, as provided in the ''Technical Support for Modifications to the Fluorinated Greenhouse Gas Emission Estimation Method Option for Semiconductor Facilities under Subpart I'' (see Docket Id. No. EPA–HQ–OAR–2011–0028–0083) and supported in the data provided by commenters, wafer cleaning is expected to represent a small percentage of total gas consumption for facilities manufacturing wafers 200 mm or smaller. Because the gases used in wafer cleaning at 200 mm facilities represent only a small portion of total fab emissions, the EPA does not anticipate that merging the etch and wafer clean subcategories will greatly impact the accuracy of GHG emission estimates. Therefore, the final rule will combine the wafer clean and etch process types for fabs using 150 and 200 mm diameter wafers. The final rule will also combine the wafer clean and etch process types for fabs using 300 and 450 mm diameter wafers.

Comment: Several commenters supported the use of default gas utilization rates and by-product formation rates under subpart I. One commenter claimed that the method allows for the use of emissions factors and abatement efficiency factors that have been derived from extensive testing and provide the basis for high quality emissions estimates without disruptive testing in the fab environment where operating uptime is critical to the productivity of the fab. The commenter stated that much of the data used to derive the factors in the proposed rule came from the efforts of the semiconductor industry in advance of the proposed rule. The commenter noted that SIA and ISMI continued emissions factor data collection activities during settlement discussions to improve the representativeness of the emissions factor database.

The commenter provided 168 additional gas utilization and by-product formation rate data sets, noting that the data were provided by semiconductor process equipment suppliers and device manufacturers for 200 mm and 300 mm plasma etch equipment. The commenter asserted that the 2012 data closed gaps in the emissions factor database and allowed for establishment of default emission factors for every gas used in semiconductor plasma etch processes, as identified in a 2011 ISMI survey. The commenter provided an analysis of the integrated database and the resulting emission factors (see Docket Id. No. EPA–HQ–OAR–2011–0028–0095). The commenter further stated that a minimum of 23 data sets for each gas were used to develop emission factors for each gas that is 1 percent or more of the total F–GHG usage for each wafer size. The commenter stated that the four gases with four or less data sets are either not used for etch or are much less than 0.1 percent of total F–GHG usage for that wafer size.

The commenter also provided a comparison of default emission factors based on the added data to the default emission factors in the 2012 proposed rule (EPA–HQ–OAR–2011–0028–0095). The commenter noted that when a large dataset was previously available to establish the proposed revised default emission factors, the addition of the 2012 data did not appreciably change the proposed revised default factors. The commenter also provided a list of the revised default by-product emission factors for 200 mm and 300 mm etch based on the additional data (EPA–HQ–OAR–2011–0028–0095). The commenter noted that several by-products, namely C_5F_8, CH_3F, and CH_2F_2, that were not detected previously, were observed during this round of testing. The commenter reasoned that this may be the result of data being provided for tool and gas combinations that were not previously tested. The commenter suggested that these new by-products would have no discernible effect on reported emissions because the by-product emission factors are small and the GWPs of these gases are less than 200.

Response: The EPA thanks the commenter for the additional data provided during the public comment period. The EPA incorporated the provided data into the existing etch process type emissions factor database to calculate new and revised gas utilization and by-product formation rates for the final rule. The EPA used the emission factor calculation methodology outlined in the proposed rule to evaluate the new and revised emission factors. Specifically, the EPA:

(1) Used a simple arithmetic averaging method to develop default utilization and by-product emission factors by gas for the etch process type; and

(2) Used the ''all inputs gas'' convention for assigning by-product formation rates (emission factors) for etch gases. This convention assigns by-product emissions to input F–GHGs used in a process by dividing the measured mass emitted of a specific by-product by the total mass of all input F–GHGs for that process and assigning this by-product factor to each input F–GHG used in that process. This is the same approach used in developing the proposed revised emission factors in the 2012 proposed rule.

For semiconductor manufacturing using 200 mm wafers, the data provided by the commenter added one gas utilization rate for semiconductor manufacturing for which no data were

previously available (for C_5F_8 as an input gas) and revised the utilization rates of nine F–GHGs. For semiconductor manufacturing using 300 mm wafers, the new data added two gas utilization rates, for C_3F_8 and CH_3F, and revised the utilization rates of 10 F–GHGs.

The new data also provided 75 revised by-product formation rates, including three new by-products not previously identified (for the by-products C_5F_8, CH_3F, and CH_2F_2).

The EPA's analysis of the new emission factor data for input gases and by-product gases is included in the docket for the final rulemaking in the item entitled ''Technical Support for Final Modifications to the Fluorinated Greenhouse Gas Emission Factors and By-Product Formation Rates for Semiconductor Facilities under Subpart I'' (EPA–HQ–OAR–2011–0028).

Comment: A commenter noted that in the preamble to the proposed rule (77 FR 63551), the EPA asked for an explanation of the zeros in the data previously collected and provided by SIA and used by the EPA to calculate the default emissions factors. The commenter noted that because the data came from a wide range of sources, the commenter cannot be certain of the basis of the zero entries in the data base. The commenter suggested that the zeros most likely mean that a gas was not present above the detection limit achieved during the test, but there is a small chance that the tester did not look for the gas. The commenter stated that in the interest of conservative emissions reporting, they agree that it is appropriate to err on the ''high side'' by determining by-product factors only using the non-zero results. The commenter stated that the default factors would be less if the zeros were included in determining the average emissions factor and that it is likely that the default by-product emissions factors would also be lower if the zeros were included at half the detection limit, using the practice proposed by the EPA for measuring the presence of certain gases when implementing the stack alternative. The commenter stated however, that it is not possible to do so for the default by-product emissions factors based on the data collected by the commenter because the field detection limits (FDLs) for each test were not previously collected. For these reasons, the commenter recommended that the EPA retain the approach used in the proposed rule for determining default by-product emissions factors from the available data.

Response: The EPA agrees with the commenter on the method for averaging the available by-product emission factor data and with the likely basis for the zeros in the data collected. The EPA considered averaging the available emissions data using either the zeros in the available data or half the detection limit for the by-product gas if the data gatherer looked for, but did not detect, by-product emissions. However, because it is not apparent that the basis of the zeros in the data represent instances where a by-product was looked for, but not detected, and because the field detection limits for each test were not previously collected, the EPA agrees with the commenter that the averaging approach used in the proposed amendments to subpart I is appropriate. In determining revised default by-product emission factors for the final rule, the EPA used the simple arithmetic mean of all available non-zero by-product emission factor data for each gas, wafer size, and process-type or subtype using the revised etch emissions database. If additional by-product emission factor data are made available to the EPA in the future, and those data include instances where a by-product was looked for, but not detected, and field detection limits are provided, the EPA may reassess the by-product emission factor calculation methodology.

Comment: One commenter stated that Equation I–15b should be eliminated. The commenter stated that the calculated abatement unit uptime for the process gases for which the abatement system is certified for treatment is the same for by-product treatment. The commenter further noted that where the unit is not effective for one or more of the by-product gases, it will not be certified to treat that gas and the DRE will be zero, and where a unit has a lower uptime for a subset of the certified gases, that lower, gas specific uptime would be applied to applicable by-product gas(es). The commenter stated that companies will have abatement uptime data organized by input gas type, and the uptime for the input gases will match the uptime for the by-product gases. The commenter contended that there is no need to perform a separate calculation of abatement system uptime for by-product gases, and enabling companies to calculate uptime by the combination of input and by-product gas would simplify calculations and recordkeeping while not reducing the accuracy of the uptime data.

Response: The EPA agrees with the commenter that only a single uptime equation is needed and has removed Equation I–15b from the final rule, and modified Equation I–15a (Equation I–15 in the final rule) so that it is applicable to both abatement systems treating input gases and by-product gases.

In developing the proposed rule amendments, the EPA developed separate equations under the assumption that the population of abatement systems treating a particular input gas could be different from the population of abatement systems treating a by-product gas because not all input gas and process combinations create the same by-product gases. However, the uptime calculated by Equations I–15a and I–15b is used in Equations I–8 and I–9, respectively, and in those latter two equations, emissions are tied to the consumption of the same input gas, Cij. Therefore, uptime only needs to be calculated for the abatement systems receiving the input gas, Cij, and separate uptime does not need to be calculated for the by-product gas. As the commenter correctly notes, where an abatement system is not certified for the treatment of a particular by-product gas from an input gas, the DRE for that gas will be zero, and the uptime of the system will be irrelevant.

The EPA has also made the other conforming changes in other sections of the final rule to remove the references to Equation I–15b as noted by the commenter.

3. Apportioning Model Verification for Facilities that Manufacture Electronics

Comment: One commenter noted that in the proposed amendments at 40 CFR 98.94(c)(2)(iv), the period of representative gas consumption used to verify the apportioning model when using the stack method would be required to end exactly on the day that stack testing is completed. The commenter noted that most gas use accounting is managed on a monthly basis, so it would not be practical to end the period on the same day that testing is completed. The commenter suggested that the rule should allow the apportioning model to be validated over a period that ends between the first and last day of the accounting month(s) in which the stack testing takes place because this would simplify the data collection for locations without significantly affecting the accuracy of the gas use estimates used in the verification. The commenter noted that 40 CFR 98.94(c)(2)(i), which is referenced by 40 CFR 98.94(c)(2)(iv), allows the representative period to be '' . . . at least 30 days but not more than the reporting year.'' Enabling locations to use an end date within the accounting month, instead of tying it to the last day of stack testing, would simplify the data collection without

introducing error, particularly if the verification period is more than 90 days. The gas usage accounting systems at some semiconductor facilities are based on accounting months (e.g., 13–4 week months) rather than calendar months. The commenter asked that 40 CFR 98.94(c)(2)(iv) be revised to allow that the time period specified in 40 CFR 98.94(c)(2)(i) ends on a day between the first and last day of the accounting month for the period that includes the last day the facility performs stack testing, or that is a defined period ending on the last day of sampling event.

Response: The EPA agrees with the commenter that it is reasonable that the period selected for apportioning model verification, when a facility is using the stack testing method, should be allowed to coincide with the accounting period used at the fab for normally tracking gas consumption, and should not be tied to the day on which testing is completed. The EPA's proposal was intended to ensure that the representative period selected to validate the apportioning model coincided with the period during which the stack testing was being performed to ensure that gas consumption during stack testing was being estimated as accurately as possible. The commenter's suggested change to 40 CFR 98.94(c)(2)(iv) would achieve the same objective and would also be consistent with the facility's normal accounting periods for gas usage.

4. Calculating N_2O Emissions for Facilities That Manufacture Electronics

Table I–8 of subpart I provides two default N_2O emission factors. One factor is for CVD processes using N_2O, and the other is for the aggregate of all other N_2O-using electronics manufacturing processes. The EPA proposed to revise the default N_2O emission factor in Table I–8 of subpart I for the aggregate of the ''other'' (non-CVD) N_2O-using manufacturing processes (77 FR 63560). The current default emission factor is 1.0 kg of N_2O emitted per kg of N_2O consumed. The proposed emission factor was 1.14 kg of N_2O emitted per kg of N_2O consumed, and represented an average of the stack emission factors for N_2O (total N_2O emissions/total N_2O consumption) measured in nine tests at three fabs. (See EPA–HQ–OAR–2011–0028–0084, section 5, for a summary of the data used to develop the proposed default emission factor.) The EPA did not propose to revise the N_2O emission factor for CVD processes. The EPA specifically sought comment on the existing data and analysis supporting the proposed emission factor, and requested additional data and analysis. The preamble noted that the average N_2O emissions from the stack testing appeared to be greater than the N_2O consumption and, as a result, the emission factor is greater than 1.0. The preamble also noted that the proposed emission factor was based on emissions associated with total N_2O consumption, rather than just emissions and consumption data associated with non-CVD applications (which were not available to the EPA). Thus, the EPA noted at proposal that when these data were applied only to non-CVD N_2O consumption, they may not have fully compensated for the unknown N_2O source that resulted in an emission factor greater than 1.0, and that EPA did not have an explanation for the apparent creation of N_2O. The preamble requested comment on the existing data and analysis supporting the proposed revised default emission factor, and noted that the EPA would consider new information and data submitted by commenters in developing the final default emission factor.

Comment: No commenters offered an explanation for the apparent creation of N_2O reflected by the average N_2O emission factor greater than 1.0, nor did any commenters provide any additional N_2O emission factor data.

Two commenters recommended that the N_2O process categories should be aligned with the F–GHG categories to ensure consistency and reduce the potential for confusion. The commenters suggested that the use of the term CVD (chemical vapor deposition) in the current rule does not align with the established process categories of chamber clean and/or plasma etch/wafer cleaning. The commenters proposed that the EPA replace the terms ''chemical vapor deposition'' or ''CVD'' where they appear in Section 98.93(b)(1) and Table I–8 with the following phrase: ''processes associated with the chamber clean process type.'' The commenters noted that N_2O is sometimes used in the deposition processes associated with the in-situ, remote, and thermal chamber cleaning tools and recipes, and suggested that the application of N_2O in these circumstances is very similar and the utilization rates are consistent. The commenters suggested that the EPA should continue to categorize those N_2O-using processes that do not fall into the processes associated with the chamber clean process type as ''other manufacturing processes.''

Response: The EPA did not receive any new N_2O emission factor data that can be used to resolve the uncertainties associated with the data used to develop the proposed emission factor for the other N_2O-using manufacturing processes of 1.14 kg of N_2O emitted per kg of N_2O consumed. As stated above, at proposal the EPA had data from nine tests of N_2O emission rates from three fabs owned by two companies. Six measurements were from one fab, two measurements were from a second fab, and one measurement was from a third fab. The second and third fab were owned by the same company. In four of the nine measurements, N_2O emissions were greater than N_2O consumption, and the emission factors were highly variable both within and across fabs, ranging from 0.34 to 1.89 kg emitted per kg consumed. The EPA could not explain the cause of the emission factors that are greater than 1.0. Given the highly variable nature of the measured emission factor data, the small number of tests, and the lack of information on the specific processes represented by those data, the EPA is not confident that those data accurately represent emissions from non-CVD processes used in electronics manufacturing. Therefore, the EPA is not finalizing the proposed change to the emission factor that was based on those data. The N_2O emission factors will remain as they are in the current Table I–8 of subpart I. The emission factor for CVD will remain at 0.8 and for all other N_2O using processes at 1.0 kg of N_2O emitted per kg of N_2O consumed. The EPA does not have, at this time, a sufficient amount of data to support any changes to these emission factors.

The EPA is also not accepting the suggestion at this time to revise the N_2O categories in Table I–8 of subpart I to include CVD and chamber clean under a single category of ''processes associated with the chamber clean process type.'' The EPA does not have data at this time to demonstrate that the utilization rates in the deposition processes associated with the in-situ, remote, and thermal cleaning process types are similar to those in the CVD process type and should, therefore, be combined into a single category.

The EPA will continue to work with industry to understand these N_2O-emitting processes and to gather additional data and information for potential future revisions. One potential avenue for gathering information and data will be through the triennial technology assessment report specified in 40 CFR 98.96(y), although the EPA may accept new data at any time they are available.

5. Abatement System Destruction and Removal Efficiency (DRE) for Facilities That Manufacture Electronics

Comment: One commenter suggested revising the definition of abatement system to clarify which abatement systems are covered under the requirements in Subpart I as follows: ''Abatement system means a device or equipment that is designed to destroy or remove F–GHGs and N_2O in waste exhaust streams from one or more electronics manufacturing production processes.''

The commenter explained that there are abatement units installed in fabs for purposes other than GHG abatement, including but not limited to solids removal, pyrophoric destruction, and volatile organic compound (VOC) emissions control. The commenter noted that under the current rule language, it appears that if any of the regulated GHGs are exhausted to these units, one is technically required to manage them under the requirements of Subpart I. These types of units are not designed for F–GHG treatment and any treatment which does occur is incidental and would not be capable of being certified under the rule requirements. The commenter stated that inclusion of the ''designed to'' phrase clarifies that only systems designed to treat F-gas emissions are covered by the requirements of the regulation.

Response: The EPA agrees with the commenter and has revised the definition of abatement system as suggested by the commenter. However, in response to other comments, the EPA has also revised the definition to include abatement systems for which the F–GHG or N_2O DRE has been measured according to 40 CFR 98.94(f). The EPA recognizes that some systems that were not specifically designed for F–GHG or N_2O abatement may still achieve substantial F–GHG or N_2O abatement for certain gases and some facilities may wish to account for this abatement in calculating emissions.

The EPA notes that only data from abatement systems that were specifically designed to abate F–GHG or N_2O emissions were used to develop the final default DREs. As a result, those default DREs will be applied only to those systems specifically designed to abate F–GHGS or N_2O, as appropriate, under the requirements of subpart I.

To account for abatement systems that may have been installed to abate other gases, such as volatile organic compounds or hazardous air pollutants, but achieve some level of F–GHG abatement, the final rule will also allow facilities to account for the DRE of systems if a site-specific DRE has been measured as specified in 40 CFR 98.94(f).

Because the final rule allows facilities to account for the DRE of systems that are specifically designed for F–GHG or N_2O abatement, and for those for which a site-specific DRE has been measured, including those that were not designed for F–GHG or N_2O abatement, the definition of abatement system in the final rule has been modified to account for both situations.

In each situation, facilities will be required to certify these systems according to the applicable requirements of 40 CFR 98.94(f), include these systems in the abatement system inventory included in the annual report (40 CFR 98.96(q)), and meet the recordkeeping requirements of 40 CFR 98.97 for abatement systems.

Comment: One commenter noted that the abatement system count in a particular gas and process type will change over time. The commenter asserted that a change in the number of systems may lead to uncertainty in the number of abatement systems that should be included in the random sampling abatement system testing program specified in 40 CFR 98.94(f)(4)(ii)(A). In the proposed rule amendments, the facility must test 20 percent of systems in a given gas and process combination in the first 2 years (a minimum of 10 percent per year until reaching a minimum of 20 percent), and at least 15 percent in each following 3-year period (a minimum of five percent per year until reaching at least 15 percent). The commenter requested that the final rule clarify the number that should be used as the basis for the percentages and suggested that it should be based on the number present at the time the testing begins for the given period of the testing. The commenter explained that if five percent are tested a year and units are added or removed between that year and the next, that round of testing still counts as five percent.

Response: The EPA agrees with the commenter that the final rule should clarify the number of abatement systems to be tested on a yearly basis, because the abatement system count for a particular gas and process type could change over time. The final rule specifies that reporters determine the number of abatement systems to be tested based on the average number present over the period required to test the minimum percent of systems for a gas and process type. For example, if a facility completes testing of the minimum 15 percent in a single year instead of three years, then the number tested would be based on the systems present in that year. If testing were completed over 3 years, the number tested would be determined based on the average number in that three year period. If a facility adds abatement systems during that time, they may need to increase the number tested in the second or third year to meet the minimum for the 3-year average. If a facility tested the minimum of 15 percent in 1 year, and then added systems in years 2 and 3, the higher number of systems would be accounted for in the number to be tested in the next 3-year period.

We are not adopting the commenter's suggestion that reporters should determine the number of abatement systems to be tested for the 3-year period based only on the count at the beginning of testing. Allowing a facility to use only the number of abatement systems at the beginning of the period may result in a non-representative site-specific DRE for a particular gas and process type/sub-type combination, especially if a facility began a program of adding substantial numbers of abatement systems after the first year of the RSASTP. Facilities that have not completed testing when abatement systems are added must include those abatement systems in determining the number to be tested. For example, if a facility installs abatement systems in years 2 or 3, and is still testing DRE in those years, then the number of systems tested must be adjusted to reflect the increased number of systems. However, if testing of 15 percent of systems is already completed for that 3-year period, the facility does not need to resume testing to account for the change in percentages. If a facility has completed testing for that period and then installs abatement systems for a gas and process combination that was not included in the testing, the facility would have the option of testing the DRE for that newly abated gas and process combination, or using the default DRE until that gas and process combination is included in the next round of testing.

Comment: One commenter requested that the EPA add a sentence to the end of 40 CFR 98.94(f)(4)(iii) to clarify that all DRE test data collected in 2011, or later, will qualify for use in determining site specific DREs for the locations where the testing occurred.

Response: The EPA agrees with the commenter regarding the use of data collected in calendar year 2011. In the final rule under 40 CFR 98.94(f)(4)(iii), the EPA is clarifying that data collected on or after January 1, 2011 may be used

in the average DRE calculation if the previous results were obtained following the requirements in 40 CFR 98.94(f)(4)(i).

Comment: One commenter suggested changes to the provisions under 40 CFR 98.94(f)(4)(v) regarding the use of a DRE value below the manufacturer-claimed DRE measured when the abatement system is not installed, operated, or maintained in accordance with the site maintenance plan. The commenter proposed two options:

(1) Include the measured DRE for the unit in the calculation of the site-specific DRE for the gas and process combination. The measured DRE for that unit must be included in the site-specific DRE average until corrective action is completed and the abatement system is retested. Corrective action must be completed in a reasonable time, but retesting can be deferred to the next testing period. Any affected abatement units that are being re-tested must be in addition to the randomly selected minimum sample for that testing period, or

(2) Exclude the measured DRE for that unit in the site-specific DRE average until corrective action is completed and the abatement system is retested. However, in that instance the abatement system will be treated as down for purposes of calculating abatement system uptime until the retest is completed.

The commenter claimed that allowing inclusion of the lower DRE in the site-specific average would enable a facility to choose whether it wants to accept a lower DRE for its site-specific value for a given gas (even though a low DRE value will have an inordinate impact on the site-specific DRE because the average is based on measurements from 35 percent of the units), or whether the facility wants to manage its uptime number for different units. The commenter stated that the benefit of choosing the lower DRE is being able to maintain a consistent uptime across all the gases, simplifying management of the calculations.

Response: The EPA agrees with the commenter that facilities should have the flexibility to either include or exclude DRE data from a system that is operating outside the established parameters for that system and not meeting the definition of ''operational mode'' in 40 CFR 98.98. However, the EPA disagrees with the commenter's implication that the facility can treat that system as meeting the definition of operational mode, even if it is not, for the purposes of calculating uptime. If a facility has abatement systems that are operating outside the established parameters and not meeting the definition of ''operational mode'', the facility must treat that system as being ''down'' for purposes of calculating uptime and emissions, even if the facility is using the lower measured DRE in calculating an average measured DRE. This approach would allow a facility to use a lower DRE value and avoid the expense of immediately repeating a system's DRE measurement, but it would also recognize that facilities should not treat an abatement system as meeting the definition of ''operational mode'' when it is operating outside established parameters and could have variable and unpredictable performance. Therefore, in both situations suggested by the commenter, the final rule requires that the facility treat the system as being down for purposes of calculating uptime until the system operation is restored to the established parameters and it is meeting the definition of operational mode.

The EPA also agrees with the commenter that some facilities may complete the testing needed to establish measured average DRE values in the first or second year of each three year period, and would not be required to perform any additional DRE testing until the start of the next three-year period. The final rule has been revised since proposal to allow a facility to postpone retesting of the affected unit with low DRE until the next required testing period, instead of the next reporting year.

Comment: One commenter (an industry organization) stated that it and its member companies have worked at considerable expense to generate an extensive DRE test database, in support of this rule, so that accurate default DREs could be incorporated into the rule. The commenter noted that the additional data they collected increased the number of fabs contributing data and the representativeness of the data across the installed base of systems inventoried, compared to the data available to develop the default DREs that were in the proposed amendments.

The commenter provided a summary of the member companies' abatement system inventory and the number of individual abatement devices that have been tested in support of the alternative default DRE calculations proposed by the commenter. The commenter contended that the EPA should not utilize any data from devices that were not designed to abate F–GHG or N_2O in the EPA assessment of abatement device performance and the determination of default DREs for the final rule.

The commenter further explained that the testing represented a substantial fraction of the installed base of devices at the companies responding to a 2011 survey of industry association member companies. The survey referenced by the commenter included results from five companies representing nine facilities and approximately 50 percent of the estimated number of abatement systems in U.S. fabs, based on a 2010 ISMI survey.[4] The commenter noted that although the testing is predominantly of one manufacturer's devices (i.e., greater than 95 percent of DRE measurements), this is representative because the U.S. industry's installed base is predominantly that same manufacturer's devices. The commenter explained that in a statistical sense, the sample of devices tested exceeds the usual 10 percent threshold at which a sample is deemed ''large'' and brings into play the ''finite sample correction'' for variance, meaning that the sample is more than a statistical representation and has begun to enumerate the population.

The commenter stated that the revised default DREs in the proposed rule were based primarily on the results of testing carried out by SIA members and their contractors. The information was provided to the EPA and used to develop the revised defaults in the proposed rule amendments. The commenter noted that since that initial submittal, SIA members have carried out additional testing and collected additional test results. The supplemental data reflect an additional 208 tests of POU abatement device performance, including 143 new tests of etch gas abatement and 65 new tests of NF_3 abatement in chamber cleaning. The complete data set with the initial data and the additional data represents three companies and nine different fabs, similar to the previously submitted data. The commenter provided the additional data, as well as a detailed analysis, as attachments to their comment letter, which are available in the docket (docket item EPA–HQ–OAR–2011–0028–0095).

The commenter also noted that they were not able to use the EPA data collection template for new DRE test results because much of the data gathering had either been completed or was underway before the template was provided in the docket to the proposed rule. The commenter stated that they had already begun using an alternative template based on the data template SIA

[4] The survey results were reported on page 2 of EPA–HQ–OAR–2011–0028–0045, SIA Briefing Paper on abatement Issues: Destruction Removal Efficiency (DRE), January 10, 2012. Submitted as part of settlement documents for *SIA* v. *EPA* (D.C. cir. No. 1024).

used to provide data to the EPA previously. The commenter provided the DRE data in an attachment to their comment letter and claimed that the information in the attachment was sufficient to assess the applicability and usefulness of the data while avoiding the confidentiality issues inherent in the template the EPA provided.

Response: The EPA thanks the commenter for the additional DRE data and appreciates the effort expended to generate the DRE test database. We acknowledge the similarities between the EPA data request sheet and the SIA template and have accepted the data provided as meeting the EPA's information needs. We have evaluated the additional data provided and have incorporated the data into the existing abatement device inventory to develop the default DRE factors in Table I–16 of the final rule. The default DRE factors in the final rule are based on an analysis of the average DREs from 343 performance tests, including 11 data points from the EPA's DRE dataset from the Technical Support Document for Process Emissions from Electronics Manufacture (Revised November 2010), 125 tests provided to the EPA from SIA after the finalization of the December 2010 subpart I rule, and the 207 tests provided to the EPA by SIA during the public comment period for this rulemaking.

EPA agrees with the commenter that data collected from abatement devices that are not designed to abate F–GHGs should not be included in the DRE testing database, and the EPA has not considered these data in the development of the default DREs in the final rule. The EPA agrees with the commenter that it is inappropriate to include devices that only incidentally abate F–GHGs and N_2O in the calculation of default DREs, as these devices are unlikely to have the same emissions reductions as systems specifically designed to abate F–GHGs. For the same reason, we have revised 40 CFR 98.94(f)(3) such that facilities may take credit for abatement using the default DREs only if they can certify that the abatement systems were specifically designed to abate F–GHGs or N_2O and have a site maintenance plan that includes the manufacturer's recommendations and specifications for installation, operation, and maintenance for each abatement system. However, the final rule also allows facilities to use measured site-specific DREs to account for emission reductions from systems that were not specifically designed to abate F–GHGs or N_2O.

The EPA remains interested in obtaining more information about whether the abatement system data are fully representative of the abatement system technologies currently installed in the U.S. industry. As discussed in the next response to comment, the EPA generally agrees with the commenter's conclusion that the data provided are representative of the facilities required to report under subpart I. The EPA intends to collect and review additional data to improve the DRE database in the future. The EPA's analysis of the DRE data provided by the commenter and the method used to calculate the default DREs in the final rule are discussed in the response to the next comment.

Comment: Several commenters disagreed with the EPA's method for calculating the default DRE factors that were included in the proposed rule. The EPA calculated the proposed default DRE factors as the arithmetic mean DRE value for a gas and process combination, minus two standard deviations of the population.[5]

Several commenters proposed an alternative method for calculating default DRE factors. The commenters claimed that the suggested approach is conservative, mirrors the approach SIA used in the facility level error analysis for emissions factors (see docket item EPA–HQ–OAR–2011–0028–0074, section 3.4.1), and recognizes that the number of individual devices in a typical fab is an important determinant of variability. The commenter provided data from an industry association survey on the number of abatement systems used at each fab for each gas and process type. The commenter's approach attempted to estimate the lowest average DRE value that any fab could be expected to achieve (''lowest fab-average''). Specifically, it placed the default DRE at the bottom of the distribution of fab averages, by discounting two standard deviations below the observed fab-average DRE. It is important to note the standard deviation used by the commenter is one that described the combined variation of fab-averages and the variation of devices, unlike the EPA method that used only the standard deviation of individual device performance (i.e., the population of all devices).

The commenters stated that fab-level averages should be the basis of emissions reporting because no fab has just one POU device, and site-specific DREs developed under the rule would be applied as fab-averages. They stated that discounting the default to the lowest expected fab-average would still fully protect against the risk of under-estimating emissions in reporting due to a default DRE that is too high. The commenters suggested that the majority of fabs would have a higher average and would still have an incentive and mechanism to obtain site-specific DREs.

The commenters asserted that their approach uses a well-accepted statistical methodology called Components of Variance Analysis to model the variance in the DRE data and separately identify the variation in the average DRE among fabs versus the variation in DRE among individual devices in a fab. The variance components method applies a random effects model to the data for the purpose of identifying the sources of variance in a sample and making inferences regarding the size (magnitude) of each source of variance. A random effects model is used because it is unknown in advance whether a particular fab or device is above or below the average for fabs or for devices within the fab. The commenter provided references for background information on the components of variance analysis.

The commenter provided a detailed description of their approach and a summary of default DREs calculated using their approach and compared to the EPA's proposed default values.[6] The commenter contended that for each gas and process combination, the alternative defaults were conservative representations of the average performance of abatement devices in the test data because, by design, they targeted the fab with the lowest average DRE.

The commenter urged the EPA to reconsider its method for discounting the available data to develop default DRE values. The commenter recommended that the EPA adopt their procedure documented in their comment letter and establish revised default DREs comparable to their developed alternative DREs for the following reasons:

(1) The EPA method of default DRE calculation in the proposed rule was overly conservative because it discounted for the entire variability of individual device performance that resulted from the varied operating conditions existing in a semiconductor manufacturing fab. The commenter claimed their method is designed to discount to a similar degree, but only for the variability that exists in fab-average DREs.

(2) In determining the average DRE for a fab, the individual device variability is attenuated by the large number of

[5] p. 3 of Technical Support for Accounting for Destruction or Removal Efficiency for Electronics Manufacturing Facilities under Subpart I, EPA–HQ–OAR–2011–0028–0082.

[6] See EPA–HQ–OAR–2011–0028–0095.

abatement devices in service in each fab. As with the variability in the emissions factors, considering the large number of individual devices in an abated fab brings the overall fab average DRE much closer to the overall average of the entire database.

(3) For all of the gas/process type combinations, the alternative default DREs developed using the commenters' recommended approach are less than the average DREs observed in the majority of the fabs that provided testing, demonstrating sufficient conservatism to prevent an under-estimation of emissions when the alternative default DREs are used in reporting. While they are higher than the default DREs in the proposed rule, the commenters stated they are designed to represent the fab with the lowest average DRE. They stated that very few fabs would have lower average DREs and, due to the expense of testing, fabs would not obtain site-specific DREs in all cases where their actual DREs are higher. The commenter asserted that by using their default DREs, reported GHG emissions would not be understated.

Response: The EPA agrees with the commenters' proposed ''Components of Variance Analysis'' averaging method for developing the default DREs in Table I–16 of the proposed rule. The EPA acknowledges that the averaging method used in the proposed rule may result in a lower default DRE than may be present at fabs using many individual abatement devices. This approach was used in the development of the proposed rule based on the limitations in the information available at the time of the proposed rulemaking. About 95 percent of the data available for the proposed DRE values came from systems from a single manufacturer, and the EPA was concerned that the data might not be representative of the performance of other device manufacturers. However, for the 2011 data reporting year, 50 facilities reported GHG emissions to the EPA under subpart I. Of those 50 facilities, 17 reported having abatements systems and the vast majority of those 17 reported abatement systems from the same manufacturer. Only four facilities with abatement systems had no systems from the manufacturer that represented greater than 95 percent of the DRE test data points. Therefore, the EPA generally agrees with the commenter's conclusion that the data provided are representative of the facilities required to report under subpart I that have abatement systems. In addition, as noted in comments earlier in this section, the EPA received additional data during the public comment period that was incorporated into the DRE database. The expanded data provide average DREs from 343 performance tests. This more robust dataset provides greater confidence for the establishment of default DREs for specific gas and process types/subtypes.

The EPA agrees that the approach recommended by the commenters is a valid statistical method that will account for the variance in the average DRE from each fab in addition to the variance in the average DRE from individual devices in each fab. The EPA also agrees with the commenter that this approach is more appropriate for the final rule than the approach used at proposal because the survey data provided by the commenter and the results of the 2011 GHGRP reporting year have demonstrated that the large majority of abatement systems in use are from the same manufacturer for which the majority of the data were collected. Therefore, the EPA's concerns with the representativeness of the DRE data documented at proposal have been largely addressed by the data received in the public comments and by the results of the 2011 annual GHG reports. The EPA remains interested in working with industry stakeholders to develop a more robust DRE dataset that includes all abatement system manufacturers.

The approach recommended by commenters takes the average minus two times the standard deviation of the average observed DRE (See Docket Id. No. EPA–HQ–OAR–2011–0028–0095). The standard deviation used is one that describes the variation of fab-averages. The method first discounts the observed average for the standard deviation among fabs, and places the default at the bottom of the statistical distribution for the lowest fab-average, then accounts for the effect of individual device performance. As noted by the commenter, using the recommended approach, the calculated DREs represent the fab with the lowest average DRE, which still results in a conservative estimate. The EPA agrees that this approach is appropriate and has adopted the method to determine the default DREs for each gas and process type/subtype in the final rule. In cases where no new data were received (e.g., for N_2O using processes and other F–GHGs not listed), we have retained the default DRE in the current subpart I of 60 percent, as described in Table 3 to the preamble to the proposed amendments (see 77 FR 63563). The following table shows the sample size, mean, standard deviation, and the calculated default DRE for each gas and process type using the final expanded dataset.

TABLE 3—SUMMARY OF CALCULATED DEFAULT DRE WHERE ADDITIONAL DATA WERE PROVIDED

Gas/process type	Number of data points available	Mean	Standard deviations		Calculated DRE (using components of variance analysis)
			Fabs	Devices	
	Etch				
CF_4	66	83.56	0.0	18.31	75.4
CH_3F	4	99.24	0.0	0.93	98.4
CHF_3	43	99.10	0.69	1.14	97.4
CH_2F_2	30	98.74	0.62	1.59	96.8
C_2F_6	5	98.84	1.85	0.50	95.1
C_4F_6	9	98.55	0.0	2.54	96.3
C_4F_8	24	98.50	0.75	1.69	96.4
C_5F_8	1	96.59	n/a	n/a	96.6
SF_6	20	98.69	0.66	1.01	97.2
NF_3	31	98.51	0.0	4.20	96.3
	Chamber Clean				

TABLE 3—SUMMARY OF CALCULATED DEFAULT DRE WHERE ADDITIONAL DATA WERE PROVIDED—Continued

Gas/process type	Number of data points available	Mean	Standard deviations		Calculated DRE (using components of variance analysis)
			Fabs	Devices	
NF_3 (All sub-types combined)	110	93.32	1.83	9.38	87.8

However, as described in the response to another comment in this section of the preamble, the EPA is including in the final rule a single combined default DRE value for all carbon-based F–GHG used in the etch process, other than CF_4, instead of individual DRE values.

The EPA also notes that the final rule provides provisions for gathering additional DRE performance data in future years for updating and revising the default DREs (see 40 CFR 98.96(y)). The EPA would consider additional data that is representative of other abatement system designs and manufacturers for update of the default DREs, when those data become available.

The final rule also provides for facilities who do not wish to use the default DREs for reporting purposes by including the option to perform site-specific DRE testing. We have revised the final rule to clarify that facilities have the option to develop site specific DREs for specific gas and process combinations on a fab-basis, while also using default DREs for other gas and process combinations. These final rule options allow flexibility and reduce burden for facilities who wish to reflect the emission reductions from abatement systems for reporting purposes.

Comment: One commenter asked that EPA revisit the conclusion that a lack of DRE data for C_3F_8 and C_5F_8 requires that they be subject to default DRE factors of 60 percent. The current data set includes one DRE value for C_5F_8 and no DRE values for C_3F_8. The commenter noted that the chemistry of C_3F_8 is very similar to C_2F_6 because both are fully fluorinated molecules, although C_3F_8 will be more amenable to abatement because of weaker molecular bonds associated with its additional carbon atom when compared to C_2F_6. Because of the similarity, the commenter stated the C_2F_6 DRE data should be recognized as applicable to C_3F_8.

The commenter made a similar argument for C_5F_8, and compared it to C_4F_8 with an average DRE of 98.5 percent, and also noted the one DRE measurement for C_5F_8 of 96.6 percent.

Response: The EPA agrees with the commenter that for these two compounds, the availability of DRE data for similar compounds justifies the use of a higher default DRE than the 60 percent included in the current rule and in the proposed amendments. The C_3F_8 and C_5F_8 compounds are more amenable to combustion than the C_2F_6 and C_4F_8, respectively, because of the presence of the additional carbon atom in the case of C_3F_8, and the presence of an additional carbon and the C=C double bond in the case of C_5F_8. Therefore, the same default DREs for C_2F_6 and C_4F_8 can be applied to C_3F_8 and C_5F_8, respectively (See Table 4 of this preamble).

Comment: One commenter asked that the EPA consider a single shared DRE value for the carbon-based etch gases (besides CF_4) to simplify calculations. The commenter noted that based on the commenter's method of calculating the default DREs, a single default of 97 percent would be appropriate. The commenter noted that in the proposed amendments, the EPA proposed a single default of 98 percent in proposed Table I–16 of subpart I for the gases for which the EPA had DRE data (CHF_3, CH_2F_2, C_4F_8, and C_4F_6).

Response: In the proposed rule, the EPA included NF_3 and SF_6 among the etch gases CHF_3, CH_2F_2, C_4F_8, and C_4F_6 and assigned a DRE of 98 percent due to similarities in the calculated DREs for each gas. As discussed in this section, the EPA has incorporated the additional DRE data submitted during the public comment period into the existing dataset to calculate default DREs for the individual compounds. The EPA recognizes that the calculated DREs for the carbon-based etch gases (other than CF_4) are grouped in the range of 95 to 98 percent, using the most recent data and methodology discussed earlier in this section. The EPA agrees with the commenter that it would simplify calculations to group together the carbon-based etch gases (other than CF_4) and assign a single default DRE to theses etch gases.

For the combined carbon-based etch gases, the default DRE for combined gases is calculated similarly to the default DRE for individual gases, with the exception that a fixed number of DRE counts, fab counts, and abatement systems per fab are assumed for each gas so that the variance components for fabs and devices are the same for each gas. This approach is used in lieu of the raw DRE average for each gas (and the associated number of data DRE values, fabs, and abatement systems) because the raw averages for each gas include variations between fabs, and are therefore less precise. For example, even if a high raw average is observed for an individual gas, this may be caused by the fact that a disproportionate number of the observations are coming from a fab which has ''above average'' DRE.

The EPA calculated the variance components (σ(Fabs) and σ(Devices)) for the carbon-based etch gases using statistical software. The results are shown in Table 4 below. The variance components only describe the variability between fabs and between devices (any difference between gases is already accounted for by the gas effect, which is assumed to be fixed). Therefore, these values do not change for each gas. The default DREs are averaged over all the carbon-based etch gases (other than CF_4) to produce a group-average DRE of 96.7 percent, which the EPA has rounded to a value of 97 percent in Table I–16 in the final rule. This default value will also apply to C_3F_8 and C_5F_8, as discussed in the response to the previous comment, even though there were no DRE data for C_3F_8 and only one DRE data point for C_5F_8.

TABLE 4—COMBINED ETCH DRE FOR NON-CF_4 CARBON-BASED F–GHG

Input gas	DRE fixed effect	DRE count	Fabs	σ(Fabs)	σ(Devices)	N	Default DRE	Group-average DRE
C_2F_6	98.6	116	5	0.631	1.523	5	96.76	
C_4F_6	98.6	116	5	0.631	1.523	5	96.74	
C_4F_8	98.7	116	5	0.631	1.523	5	96.80	
C_5F_8	96.8	116	5	0.631	1.523	5	94.97	96.71
CH_2F_2	98.9	116	5	0.631	1.523	5	97.00	
CH_3F	99.2	116	5	0.631	1.523	5	97.33	
CHF_3	99.2	116	5	0.631	1.523	5	97.35	

Comment: Several commenters expressed concern regarding the certification requirements for abatement systems under proposed 40 CFR 98.94(f) and 40 CFR 98.96(q).

In regards to the requirement that reporters who wish to account for abatement must certify and document/verify that the abatement devices were installed, operated, and maintained in accordance with manufacturer recommendations and specifications, one commenter stated that manufacturer's specifications may no longer be available. The comment explained that even when they are available, the specifications can be general and do not specifically call out how to manage and maintain the abatement devices. Typically, this requires the fab to create a site-specific maintenance plan, which will be based on a combination of available manufacturer's updated specifications and/or the fab-specific procedures developed through subsequent operating and maintenance experience. Material changes to the manufacturer's specification requirements for their abatement systems may be necessary to address process or equipment specific requirements in an operating fab.

The commenter noted that for existing older abatement systems, it is not always possible to determine that they were installed in accordance with manufacturer specifications at the time of their original installation, which in many cases preceded this rule. Records of the manufacturer's intent and installation requirements may not have existed and, if they did exist, they were not kept. Importantly, process tool(s) and gases/liquid precursors may have changed since the initial installation. It is critical that abatement systems be operated and maintained properly in the periods when emissions are being reported and that the current infrastructure and system configuration are appropriate for the abatement application. It is not germane whether the abatement systems were installed in a particular way in the past, as some of the systems at specific fabs have been in operation for up to a decade.

The commenter further explained that some process types may require parameters outside of the manufacturer's specification requirements to address complications introduced by specific material types, reaction products, or to meet specific safety requirements. ''Tuning'' of operating parameters and/or maintenance schedules different from the abatement system manufacturer's recommendations are required to optimize system operation in these cases. The commenter noted that examples of maintenance plan adjustments beyond the original manufacturer's recommendations to maximize the DRE for CF_4 abatement were discussed in docket EPA–HQ–OAR–2011–0028–0046 item 4a.[7]

The commenter contended that the purpose of the site maintenance plan is to ensure that the abatement devices are operated and maintained correctly. The commenter stated that the plan should be a dynamic document that incorporates improvements in how the abatement devices are serviced and maintained, including corrective actions that are taken when the causes of abatement system failure or outage are determined. In addition, proper set-up of abatement device in GHG abatement mode after maintenance will be addressed. The commenter reasoned that, by their nature, these plans may depart from the original manufacturer's specifications.

Response: The EPA agrees with the commenter that there are scenarios in which a facility may not be able to rely on manufacturer's specifications (e.g., if they are unavailable), or where the facility may have a need to adopt fab-specific procedures to optimize system performance. As such, we have revised 40 CFR 98.94(f)(1) and 40 CFR 98.96(q) to specify that facilities must certify and document that the abatement systems are properly installed, operated, and maintained according to the site maintenance plan for abatement systems that is developed and maintained in records as specified in 40 CFR 98.97(d).

However, the EPA also recognizes that manufacturers specifications are still important to ensuring the proper installation and operation of abatement systems and the reference to manufacturers specifications has been retained in 40 CFR 98.97(d)(9). As noted in docket item EPA–HQ–OAR–2011–0028–0046, item 4, cited by the commenter and incorporated into the ''Technical Support for Accounting for Destruction or Removal Efficiency for Electronics Manufacturing Facilities under Subpart I'' (see Docket ID. No. EPA–HQ–OAR–2011–0028–0082), during the review of DRE test data for the revision of the default DRE, the EPA and SIA noted that some low CF_4 and NF_3 DREs in the test data resulted from variation in flows through the abatement system and from operating and maintaining the abatement systems outside of the manufacturer specifications. Specifically, low CF_4 DREs associated with etch processes were found to be the result of systems operating outside the manufacturers' recommended set points for flow rate and/or pressure that should have been verified during abatement installation. The document cited by the commenter reported that once the abatement systems were returned to the manufacturer's specifications, the DRE also returned to higher levels comparable to those of other systems. Because the high variability in the available DRE data was directly associated with operating outside of the manufacturer's specifications, the EPA proposed a requirement for facilities to develop, follow, and keep on-site maintenance plans for abatement systems that are built on the manufacturer's recommended installation, operation, and maintenance program, and that must include a defined preventive maintenance process and checklist and a corrective action

[7] Questions Generated from SIA/EPA Conference Calls and Outstanding Questions from Work Plan appendices, March 29, 2012.

process to follow whenever an abatement system fails to operate properly.

Therefore, the EPA has determined that although a certification may rely on the implementation of site maintenance plans for abatement systems, it is also necessary to ensure that facilities rely on manufacturer's recommendations and specifications to the extent possible, particularly when using the default DRE values. Therefore, if the facility uses the emissions estimation methods in 40 CFR 98.93(a), (b), and (i) and uses the default DRE values when claiming abatement for reporting purposes, the final site maintenance plan requirements in 40 CFR 98.97(d)(9) for abatement systems must be based on the manufacturer's recommendations and specifications for installation, operation, and maintenance. If the facility is using properly measured site-specific DRE values, the final site maintenance plan must include the manufacturer's recommendations and specifications for installation, operation, and maintenance, where available. For a facility to use the default DREs, the EPA needs assurance that the abatement system is installed, operated, and maintained in accordance with the manufacturer's specifications. Otherwise, the EPA would be unable to verify that the default DREs are met without further validation testing. The site maintenance plan for abatement systems must also include documentation where the operation and maintenance deviates from the manufacturer's specifications, including an explanation of how the deviations do not negatively affect the performance or destruction or removal efficiency of the abatement system. For example, the site maintenance plan may include documentation where the process optimizes system performance (e.g., more frequent maintenance checks or tighter operating parameters). Finally, facilities who elect to claim abatement for reporting purposes and want to use the default DRE factors must also certify that the abatement systems are specifically designed for F–GHG abatement (or N_2O abatement, as appropriate). (This certification is not needed for facilities using a measured site-specific DRE value.) The facility must also have a site maintenance plan that is based on the manufacturer's recommendations and specifications for each abatement system These are minimal requirements that are necessary to verify that abatement systems are operating consistently at or above the default DRE. We note that the commenter provided several additional recommendations for changes to the proposed provisions for certifications regarding abatement systems and the use of default and site-specific DRE values. Those comments and our responses can be found in ''Reporting of Greenhouse Gases—Revisions to the Electronics Manufacturing Category of the Greenhouse Gas Reporting Rule: EPA's Response to Public Comment'' (see EPA–HQ–OAR–2011–0028).

Comment: One commenter stated that the proposed rule requires a facility using the stack testing alternative to make assumptions for abatement system DREs in order to adjust annual emissions calculations for abatement downtime and does not allow one to assume a DRE of zero, as would be an option under the emission factor method. The commenter stated that this is a logical approach for a stack test method; however, other portions of the rule require that a DRE assumption of zero be used if a facility cannot meet certain requirements for certifying the design and installation of an abatement device. The commenter concluded that the net result is that, as the rule was proposed, a facility that is unable to meet these certification requirements (for example, one with older abatement equipment where such certification may be difficult to obtain) is effectively disqualified from using the stack test method as they may not assume zero efficiency, yet cannot meet the requirements to assume something other than zero. The commenter recommended revising the DRE certification requirements such that the use of default DRE factors is dependent upon certifying and documenting that the systems are installed, operated, and maintained according to the site maintenance plan, and not according to manufacturers specifications. The commenter stated that this is consistent with the way in which other pollution control devices are handled in many facility air permits.

Response: In stack testing, the measured emissions used to calculate fab-specific emission factors will reflect the effect of all abatement systems, including those not specifically designed for F–GHG abatement that still achieve some incidental F–GHG abatement. However, the EPA recognizes that facilities using the stack testing method may not be able to certify that the abatement systems are specifically designed to abate F–GHGs, although those systems may achieve incidental control of F–GHGs that could have an effect on emissions. As discussed earlier in this section, we have revised the definition of ''abatement system'' to clarify that the abatement system requirements of subpart I only apply to abatement systems that are designed to abate F–GHGs (and/or N_2O, but N_2O is not included in the stack testing alternative), or for which the DRE has been measured according to 40 CFR 98.94. Facilities using the stack testing alternative would, in their emissions calculations, account for the effect of abatement systems that are specifically designed for F–GHG abatement and for systems for which the facility measured the site-specific DRE according to 40 CFR 98.94. In the case of abatement systems that are not specifically designed to abate F–GHG, the reporter may elect to not include the effect of those systems in their emissions calculations. In all cases where the reporter is accounting for the effect of the abatement systems, the reporter must also comply with the other monitoring and quality assurance requirements for abatement systems in subpart I. In all other cases, the reporters would assume that the DRE is zero for abatement systems that are not designed for abatement of F–GHG and would not account for the downtime of those systems.

In order to ensure that the abatement systems, as defined in 40 CFR 98.98 and included in the emission calculations, are operated properly and consistently following the initial stack test, the EPA is requiring that facilities must certify that the abatement system is operated and maintained in accordance with the site maintenance plan for abatement systems in 40 CFR 98.97(d). Facilities who elect to use the stack testing alternative in 40 CFR 98.93(i) and who elect to use the default DREs must base the site maintenance plan on the abatement system manufacturer's recommendations and specifications. If manufacturer's recommendations and specifications are unavailable, the facility using the stack test method must use a site-specific DRE, which can be developed concurrently. Facilities using the stack testing method and the default DREs must also certify that the abatement systems are designed to abate F–GHGs.

Finally, the EPA also needs to ensure that facilities using the stack test alternative account for the abatement systems that are present when calculating their facility annual emissions. We have revised the final rule to clarify that facilities using the stack test alternative must certify that all abatement systems that are designed to abate F–GHGs, or for which the DRE has been measured, are fully accounted for when calculating annual emissions and accounting for excess emissions from

downtime (i.e., facilities are accounting for the uptime and DREs of these systems, either using the default DREs or site-specific DRES, in Equations I–21 through I–24). Facilities would only apply the default DREs to account for abatement from those systems that meet the certification requirements and are specifically designed to abate F–GHGs. They would use a site-specific DRE for systems for which the facility had measured a site-specific DRE. If they elect to account for abatement from systems that are not specifically designed to abate F–GHGs, they would use a site-specific DRE for these systems. These requirements are necessary to ensure that the calculated emission factors are representative and accurately reflect abatement.

6. Abatement System Uptime for Facilities That Manufacture Electronics

Comment: One commenter proposed revisions to the definition of uptime such that uptime is defined as ''the ratio of the total time during which the abatement system is in an operational mode and operating in accordance with the site abatement system maintenance plan, to the total time during which production process tool(s) connected to that abatement system are normally in operation.''

Response: The EPA is not revising the definition of ''uptime'' as suggested by the commenter. The EPA previously defined ''operational mode'' as ''the time in which an abatement system is properly installed, maintained, and operated according to manufacturers' specifications as required in 40 CFR 98.93(f)(1). This includes being properly operated within the range of parameters as specified in the operations manual provided by the system manufacturer.'' Consistent with the changes to the abatement system certification requirements in the final rule, the EPA has revised the definition of ''operational mode'' to reflect that the abatement system is properly installed, maintained, and operated according to the site maintenance plan for abatement systems. Therefore, the revisions to the definition of ''uptime'' as requested by the commenter are not necessary, as an abatement system in operational mode must be operated within the parameters of the site maintenance plan.

7. Triennial Technology Report for Semiconductor Manufacturing

Comment: Several commenters expressed concern with an option for the triennial technology report on which the EPA requested comment, specifically the option to require additional information beyond that proposed in 40 CFR 98.96(y). The preamble to the proposed amendments requested comment on requiring that the reports include an analysis of the effect of the introduction of new processes on existing tools, where a new process could be defined as one that used a markedly different gas mixture than the mixture used by previous processes applied to achieve the same end (i.e., etch the same film or feature), or that included a change in the radio frequency (RF) power and gas flow rate (see 77 FR 63566). Commenters stated that these suggested requirements appear to resurrect the recipe testing requirements established in the original subpart I regulation published in December of 2010 and which were specifically called out as unworkable in SIA's petition for reconsideration. One commenter stated that, as described in the petition for reconsideration, the recipe testing requirements created unacceptable intellectual property risk, potential national security concerns, significant disruption of fab operations, and unreasonable and excessive economic impact. The commenters cited as examples the impacts (cost and business disruption) of process emissions factor testing that were experienced during the additional emissions factor testing work that was completed in support of the default factors that are in Subpart I. The commenters reported that in one fab, testing required two weeks of time and cost over $25,000 (not including lost production and fab staff support time) just to measure 12 emissions factors for 5 tools. The ISMI technology transfer report ''2010 ISMI Analysis of the Impact of Final Mandatory Reporting Rule Subpart I on U.S. Semiconductor Facilities'' issued January 31, 2011 provides additional description of the impact of recipe level testing.

The commenter further explained that the cost to test all new and revised process recipes is very large. On average, each large facility introduces 40 new etch processes per year and changes 56 etch recipes per year; for 29 large facilities the testing cost per year equates to $17 million or $51 million for three years. This assumes $35,000 for testing/week and six recipes tested/week, according to the commenter.

The commenter noted that the cost for tool downtime for the testing over the three years would be an additional $6.9 million. (This assumes 11 hours of downtime for an 8 hour test and 3 hours for tool requalification; $1.5 million per/year for etch tool downtime.) Total cost for testing of tools is on the order of $58 million.

The commenter asserted that the cost of any testing of POU abatement devices for DRE changes would be additional. Costs for large leading-edge technology fabs would be significantly higher than the industry average numbers by a factor of 10 or more.

The commenter stated that in the economic impact assessment for the proposed amendments (EPA–HQ–OAR–2011–0028–0081), the EPA does not include the cost for preparing the triennial report, ''. . . given that the EPA does not expect this requirement to significantly affect the compliance costs either on a per facility or a national basis . . .'' The commenter estimated that preparing a triennial report, as proposed in the preamble to the revised subpart I, would require the effort of several full time employees. The commenter stated that their intent with regards to preparing the triennial report and developing a company or industry plan to perform testing to assess the impact of new (meaning significantly different from existing) processes, equipment, and technologies on default emissions factors and default DRES, is to enable the industry to pool its resources to most efficiently measure, collect, and report the data needed to assess these changes. The commenter further added that the adoption and propagation of distinctly new processes, equipment, and technologies into high-volume manufacturing occurs slowly, allowing a reasoned, considered plan to be developed to assess the impact. Additionally, the commenter claimed that their statistical assessment of the emissions factor data for current manufacturing processes and equipment indicate that the magnitude of the emissions factor is primarily dependent on the wafer size and the gas type, suggesting that significant changes are unlikely to occur frequently because these two variables are not changed frequently.

The commenter concluded that the level of information requested and the cost associated with measuring and collecting data according to the expanded scope of triennial reporting requirements described in the preamble are excessive and the final rule should not include more than what is included in the proposed 40 CFR 98.96(y).

Response: Except for a minor technical correction, EPA is finalizing the requirements for the triennial technology report as proposed at 40 CFR 98.96(y). Facilities are not required to implement recipe-specific testing in the first phase of the triennial technology review, as some commenters inferred from the request for comment in the preamble to the proposed amendments.

Nevertheless, EPA encourages, but does not require, facilities to acquire measurements of gas utilization rates, by-product formation rates, and DREs that reflect the impact of technology changes for the triennial report, because such measurements would be useful for informing future changes to the rule.

To the extent that facilities acquire these measurements, either because they perform the measurements themselves or because they receive them from tool manufacturers, 40 CFR 98.96(y)(2)(iv) requires facilities to submit them as part of the triennial report. That provision states facilities must ''provide any utilization and by-product formation rates and/or destruction or removal efficiency data that have been collected in the previous 3 years that support the changes in semiconductor manufacturing processes described in the report.'' This requirement refers to all the rate or DRE measurements collected in the previous 3 years that reflect the impact of any technology changes during that time. Submission of specific selections or subsets of those measurements would not meet this requirement because such selections or subsets may not be representative. We anticipate that the types of information submitted would include information similar to that submitted to inform the default emission factors and default DREs in today's rule.

In the proposal, we also requested comment on whether triennial reports should include gas utilization rates and by-product formation rates measured ''for all new tools acquired by the facility over the previous 3 years as well as gas utilization rates and by-product formation rates measured for new processes run on existing tools'' (77 FR 63566). For these measurements, testing data for new tool models is often available from the manufacturer or from performance tests as new tool models are installed. The EPA anticipates that this information could be used to inform future changes to the rule and could be supplied through the triennial report. While the EPA is not requiring that this information be included in the triennial report, the agency encourages reporters to include this information on a voluntary basis where practical.

The final rule does not require the triennial report to consider process or technology changes at the recipe-specific level, nor does it require facilities to collect any recipe-specific data. However, the report should address whether, over time, the facility has incrementally implemented process or technology changes that have now cumulatively resulted in a wide-spread effect on emission factors or DRE factors. The report would not need to consider each incremental change separately. For example, the report does not need to consider differences in flow rates among individual recipes and their effect on the emission rates of individual gases. However, if the industry implements or adopts a technology change that substantially affects the average flow rate for a given process type such that the current default emission factors may no longer be representative, the cause and potential impact of that change in flow rate should be addressed in the triennial technology review report (though not detailed at the recipe-level). See Section II.A.12 of this preamble for additional discussion of the contents of the triennial report. The EPA agrees with the commenter that the triennial technology review should avoid the burden and potential disclosure concern associated with the provisions for reporting of recipe-specific information that appear in the December 2010 promulgated rule and that are removed from this amended rule.

We note that commenters provided additional input regarding the triennial technology report. Those comments and our responses can be found in ''Reporting of Greenhouse Gases—Technical Revisions to the Electronics Manufacturing Category of the Greenhouse Gas Reporting Rule: EPA's Response to Public Comment'' (see EPA–HQ–OAR–2011–0028).

8. Final Amendments to Reporting and Recordkeeping

Comment: One commenter noted that a facility may have multiple fabs, which each process different wafer sizes. The commenter recommended that the language in 40 CFR 98.96(a) and (b) apply to fabs rather than facilities. The commenter noted that the wafer size and capacity could then be reported for each fab, rather than trying to report for the entire facility.

Response: The EPA appreciates the input provided by the commenter regarding facility and fab level reporting requirements. The EPA agrees with the commenter that the language in 40 CFR 98.96(a) and (b) should apply to fabs rather than facilities. As a result, the EPA is promulgating the final amendments to subpart I with the proposed modifications to 40 CFR 98.96(a) and (b).

Comment: One commenter asserted that the facility-wide DRE reporting requirement under 40 CFR 98.96(r) using Equations I–26, I–27, and I–28, should not apply to the stack test alternative. The commenter noted that the derivation of a facility-wide DRE is unnecessarily complicated, subject to error, and provides no material benefit to the reporting of emissions under the stack test option. According to the commenter, the EPA's proposed requirement to use these equations entails an artificial determination of how much of a facility's emissions are coming from the process tools versus the abatement systems, and as such is complicated, somewhat arbitrary, and potentially subject to errors. The commenter stated that the requirement to determine an effective, facility-wide or fab-wide DRE using equations I–26 and I–28 for facilities that choose the stack testing method (40 CFR 98.93(i)) is not logical and should be removed from the rule.

The commenter explained that one of the benefits of the stack testing method is that it eliminates the need to test individual abatement units, which is costly. The stack test data combines the impact of the gas utilization factors in the equipment and the abatement system DREs into a single emissions factor for the facility. Whether a fab chooses to generate and use site-specific DREs or use the default DRES, the DREs will only be used to adjust fab emissions for abatement system downtime; adjustments which are expected to have a small influence on the total site emissions. The proposal to calculate an effective DRE for the facility would require using complicated calculations and apportioning gas use to abatement units.

The commenter also stated that attempting to compute a combined DRE for a multi-fab facility that uses the emissions factor method at one or more fabs and the stack testing method at the other(s) also seems to be unnecessary. The commenter proposed revisions that they claimed simplified the reporting of a facility-wide DRE value by calculating only a fab-level DRE instead of a facility-wide DRE.

The commenter suggested as an alternative that the EPA use a modification to proposed Equation I–24 of subpart I because Equation I–24 calculates the average weighted fraction of F–GHG input gas i destroyed or removed in abatement systems. The commenter stated that the EPA should modify equation I–24, adding the multiplication of both the numerator and denominator terms by the GWP for each gas. The commenter stated this would provide an estimate of the site-wide DRE based on the removal of CO_2e emissions that will have as much meaning as a fab-wide DRE calculated using equations I–26 and I–28, while requiring much less work on the part of the fab.

Response: The EPA disagrees with the commenter that the facility-wide DRE calculated by Equations I–26, I–27, and I–28 in proposed 40 CFR 98.96(r) is not relevant for facilities using the stack testing alternative. As explained in the preamble to the proposed amendments (77 FR 63569), the EPA included a requirement that facilities report a facility-wide DRE factor to assist in our verification of reported GHG emissions. In the amendments to subpart I, we proposed to move the information on the number and DRE of abatement systems at each facility from the reporting requirements to the recordkeeping requirements, and these changes are being made in the final rule. In order to determine the extent to which GHG emissions from this category are being abated, we proposed to require facilities to report a facility-wide DRE. The EPA's intent of requiring a facility-wide DRE is also to gain an understanding of the extent to which a fab or facility's emissions are abated in the absence of facilities reporting information that may raise potential disclosure concerns, such as actual DRE values for gases and process types. This information can also be used to help verify reported emissions. This rationale is equally valid for facilities using the default emission factor method in 40 CFR 98.93(a)

Contrary to the reporters interpretation, the facility-wide DRE is calculated using inputs, emissions, and other data already collected and calculated to report annual F–GHG and N_2O emissions and does not require the collection of new data. The terms used in the equations to calculate the facility-wide DRE for a facility using the stack testing alternative are already calculated by the facility to report emissions. Reporters using the stack testing alternative would not have to measure the DRE of abatement systems unless they were doing so to determine the DRE of systems that were not specifically designed to abate F–GHG. Otherwise they could use default DREs for systems that were specifically designed for F–GHG abatement. Similarly, facilities would not have to separately apportion gas usage to tools with abatement systems in Equation I–28 because that is already done to calculate emissions as part of other equations in the stack testing alternative. First, the commenter states that DREs are only used under the stack test option to adjust fab emissions for abatement system downtime, and that downtime is expected to have a small influence on the total site emissions. While we agree that the inclusion of an adjustment for abatement system downtime may have a small influence on the total site emissions as calculated, the argument made by the commenter does not provide justification for removing the requirement for a facility to report a fab-wide DRE. Even when the uptime for a fab is relatively high, the fact remains that the fab is abated and no other reporting requirement provides the EPA with an estimate of the extent of the abatement.

Second, the commenter states that using Equations I–26 and I–28 for the stack test alternative is unnecessary and the commenter proposes using a modification of Equation I–24 that incorporates multiplication by GWP values. We disagree that the use of Equations I–26 and I–28 is unnecessary for fabs electing to use the stack test option. First, Equation I–28 is necessary to account for the fact that a fab may not be fully abated and a portion of the input gas consumed in the fab is used by tools that are unabated. The result of Equation I–24 does not account for apportionment between abated and unabated tools. Apportionment is accounted for in Equation I–28 by the ''a_{if}'' and ''a_f'' terms, just as in Equation I–21 and I–22. Reporting the result of Equation I–24, regardless of any accounting for GWPs, would result in an artificially high fab-wide DRE because Equation I–24 does not account for the portion of gases consumed by tools that are not abated. Equation I–26 is also necessary because reporters are not allowed to calculate N_2O emissions using the stack test method. As a result, Equation I–26 incorporates the abatement of N_2O emissions into the effective fab-wide DRE calculation.

Finally, we disagree that the equations under 40 CFR 98.96(r) are unnecessarily complicated. Although the equations may appear complicated, the equations, in fact, use many of the same data operations already performed to calculate emissions under either the default emission factor approach or the stack testing alternative. For example, the summation of F–GHGs and N_2O contained in the numerator of Equation I–26 is easily calculated from the emissions already reported under 40 CFR 98.96(c). The first term in Equation I–28 is the same as the second term in Equation I–21, except that the value ''$(1–UT_f)$'' has been replaced with ''GWP_i'' for the input gas. The case is the same for the second term in Equation I–28; it is identical to the second term in Equation I–22, except again the value ''$(1–UT_f)$'' has been replaced with ''GWP_k'' for the by-product gas. Therefore, due to the similarity of terms, we believe that Equation I–28 is no more burdensome or complicated than Equation I–21 or I–22.

We agree with the commenter that facilities should be required to report a fab-wide DRE instead of a combined DRE for a multi-fab facility. Reporting a fab-wide DRE, instead of a facility-wide DRE, will provide the EPA with a more detailed assessment of the extent to which GHG emissions are being abated. The fab-wide DRE will also simplify the calculation requirements for reporters because they will not have to use an extra equation to combine the DREs when a facility uses the emission factor method and the stack testing alternative in different fabs at the same facility.

In light of the commenter's suggestion, we are finalizing the requirement for reporters to provide effective DRE on a fab basis, instead of a facility basis. We disagree, however, with the commenter's assertion that a facility that chooses the stack test option to calculate emissions from a fab should not be required to report an effective fab-wide DRE, and as such, we are requiring all facilities to report an effective fab-wide DRE, regardless of their emission calculation methodology.

9. Technical Corrections in Response to Public Comments

The final rule includes numerous minor technical changes as a result of addressing major public comments. These changes are summarized in the document, ''Reporting of Greenhouse Gases—Technical Revisions to the Electronics Manufacturing Category of the Greenhouse Gas Reporting Rule: EPA's Response to Public Comment'' (see EPA–HQ–OAR–2011–0028).

III. Confidentiality Determinations for New and Revised Subpart I Data Elements and Responses to Public Comments

A. Final Confidentiality Determinations for New and Revised Subpart I Data Elements

In this action, we have added or revised 25 new data reporting requirements in subpart I. We have assigned each of these new or revised data elements in subpart I, a direct emitter subpart, to one of the direct emitter data categories created in the 2011 Final CBI Rule.[8] The 25 new or revised data elements are assigned to one of the 10 data categories listed in

[8] The 2011 Final CBI Rule created 11 direct emitter date categories, including the 10 data categories listed in Table 5 of this preamble and an inputs to emissions equations data category. However, EPA has not made final confidentiality determinations for any data element assigned to the inputs to emissions equations data category either in the 2011 Final CBI Rule or any other rulemaking.

Table 5 of this preamble. Please see the memorandum titled ''Final Data Category Assignments for Subpart I 2012 Amendments'' in Docket EPA–HQ–OAR–2011–0028 for a list of the 25 new or revised data elements in this subpart and their final category assignments.

TABLE 5—SUMMARY OF FINAL CONFIDENTIALITY DETERMINATIONS FOR DIRECT EMITTER DATA CATEGORIES

[Based on May 26, 2011 final CBI rule]

Data category	Confidentiality determination for data elements in each category		
	Emission data [a]	Data that are not emission data and not CBI	Data that are not emission data but are CBI [b]
Facility and Unit Identifier Information	X		
Emissions	X		
Calculation Methodology and Methodological Tier	X		
Data Elements Reported for Periods of Missing Data that are Not Inputs to Emission Equations	X		
Unit/Process ''Static'' Characteristics that are Not Inputs to Emission Equations		X [c]	X [c]
Unit/Process Operating Characteristics that are Not Inputs to Emission Equations		X [c]	X [c]
Test and Calibration Methods		X	
Production/Throughput Data that are Not Inputs to Emission Equations			X
Raw Materials Consumed that are Not Inputs to Emission Equations			X
Process-Specific and Vendor Data Submitted in BAMM Extension Requests			X

[a] Under CAA section 114(c), ''emission data'' are not entitled to confidential treatment. The term ''emission data'' is defined at 40 CFR 2.301(a)(2)(i).

[b] Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.

[c] In the 2011 Final CBI Rule, this data category contains both data elements determined to be CBI and those determined not to be CBI. See discussion in Section III.A of this preamble for more details.

As shown in Table 5 of this preamble, the EPA made categorical confidentiality determinations for data elements assigned to eight direct emitter data categories. For two data categories, ''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' and ''Unit/Process Operating Characteristics That are Not Inputs to Emission Equations,'' the EPA determined in the 2011 Final CBI Rule that the data elements assigned to those categories are not emission data but did not make categorical CBI determinations. Rather, the EPA made CBI determinations for individual data elements assigned to these two data categories.

We have followed the same approach in this final rule. Specifically, we have assigned each of the 25 new or revised data elements in the final subpart I amendments to the appropriate direct emitter data category. For the 13 data elements assigned to categories with categorical confidentiality determinations, we have applied the categorical determinations made in the 2011 Final CBI Rule to the assigned data elements. For the 12 data elements assigned to the ''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' and the ''Unit/Process Operating Characteristics That are Not Inputs to Emission Equations'' data categories, consistent with our approach towards data elements previously assigned to these data categories, we are finalizing that these data elements are not emission data. All 25 new and revised subpart I data elements in the final subpart I amendments are listed in the memorandum titled ''Final Data Category Assignments for Subpart I 2012 Amendments'' in Docket EPA–HQ–OAR–2011–0028.

B. Public Comments on the Proposed Confidentiality Determinations

The EPA is finalizing all confidentiality determinations as they were proposed. Please refer to the preamble to the proposed rule (77 FR 63570) for additional information regarding the proposed confidentiality determinations.

The EPA received several comments questioning the proposed determination that several new or revised data elements should be treated as confidential, or that the confidentiality should be determined on a case-by-case basis.

Comment: One commenter questioned the determination that the confidentiality of the identification of the quantifiable metric used in the fab-specific engineering model to apportion gas consumption for each fab should be determined on a case-by-case basis. The commenter asserted that EPA has not provided any justification for how release of this data would cause competitive harm and that it should not be treated as confidential.

Response: The EPA made a final confidentiality determination for the identification of the quantifiable metric used in the facility-specific engineering model to apportion gas consumption (40 CFR 98.96(m)(i)) in an earlier **Federal Register** notice (77 FR 48072, August 13, 2012), after a notice and period for public comment (77 FR 10434, February 22, 2012). In that final notice (77 FR 48072, August 13, 2012), the EPA decided to evaluate the confidentiality status of that data element on a case-by-case basis, in accordance with existing confidentiality regulations in 40 CFR part 2, subpart B.

The EPA re-proposed the confidentiality determination for this data element due to the proposed revision to this data element. The proposed changes to this data element, which we are finalizing today, reflect that the apportioning model is now fab-specific instead of facility-specific because the amendments now require gas use to be apportioned on a fab basis (instead of a facility basis) and a facility may have separate models for each fab. As mentioned above, we have determined that the confidentiality status of the identification of the quantifiable metric used in the facility-specific engineering model to apportion gas consumption should be determined on a case-by-case basis. The change in the basis of the quantifiable metric (i.e., from a facility to fab basis) does not fundamentally change the nature of the information being reported; for example, each fab at a facility may use the same metric, and as a result the fab-based and

facility-based quantifiable metrics may be the same. Because the commenter did not offer any compelling reasons why the EPA should now change course due to the change in the basis of the quantifiable metric, the EPA will continue to evaluate claims by facilities that this data element should be protected as CBI on a case-by-case basis.

Comment: One commenter expressed concern with EPA's proposed determinations to treat the inventory of abatement systems under 40 CFR 98.96(p) as confidential business information. The commenter asserted that that if the EPA ''has better evidence that *actual* harm could occur from the release of the inventory information in certain circumstances than the current justification provided at 77 FR 10,440, row 3, no categorical determination should be made.'' (Emphasis added.) Instead, the commenter asserted, ''the confidentiality of the inventory should require specific demonstration by the company/facility involved that there is an actual threat of competitive harm and reverse-engineering.'' (Emphasis added.)

Response: The EPA originally proposed to treat the inventory of abatement systems data element in 40 CFR 98.96(p) as confidential business information in a February 22, 2012 notice of proposed rulemaking (77 FR 10434) followed by a period for public comment. That original determination was finalized as proposed in an August 13, 2012 rulemaking (77 FR 48072). As discussed in the proposal for this action (77 FR 63538, October 16, 2012), the EPA re-proposed the confidentiality determination for this data element in conjunction with edits that were proposed to the data element itself. We are finalizing the changes to this data element as proposed to clarify that the number of abatement systems and the basis of the destruction or removal efficiency should be reported on a process sub-type or process type basis. Please see Table 2 of this preamble for a detailed description of the changes being made to the inventory of abatement systems data element. We are also moving the following reporting requirements to recordkeeping: (1) The number of abatement systems of each manufacturer, and model number, and the manufacturer's claimed F–GHG and N_2O destruction or removal efficiency, if any; (2) records of destruction or removal efficiency measurements over the in-use life of each abatement system; and (3) a description of the tool, with the process type or sub-type, for which the abatement system treats exhaust.

Facilities must still report an inventory, and more specifically, the number of abatement systems at their facility. As a result, a competitor may be able to gain insight into the number of tools at the facility, as described above. For the same reasons stated in the prior confidentiality determination described above, we believe that confidentiality determination for this data element, as revised, should remain as CBI. The change in the basis of the number of abatement systems does not affect the rationales we previously set forth supporting a CBI determination for this data element, nor did the commenter offer any specific reasons why we should now change course due to the change to the basis of the number of abatement systems reported. The EPA also notes that the commenter's assertion that a company/facility should be required to demonstrate an ''actual threat of competitive harm'' for a data element to be determined to be CBI is inconsistent with 40 CFR 2.208, which states that the business must demonstrate that ''disclosure of the information is likely to cause substantial harm to the business's competitive position.'' The EPA will continue to treat this data element as confidential business information.

Comment: One commenter expressed concern with EPA's proposed determination to treat five of the six data elements specified in 40 CFR 98.96(y) for the Triennial Technology Assessment as confidential. These data elements include all of the items to be included in the Triennial Technology Assessment Report, with the exception of emissions data that might be provided under 98.96(y)(2)(iv). The commenter asked EPA to reconsider the treatment for these other data elements as confidential and asserted that the public has a compelling need for access because public stakeholders outside the semiconductor industry will be unable to evaluate both industry claims regarding technology evolution and EPA's judgment regarding whether and when it is appropriate to update the Subpart I default values. The commenter asked that EPA not make a categorical determination on these five data elements, but instead, evaluate confidentiality claims on a case-by-case basis.

Other commenters supported the EPA's determination that these five data elements should be treated as confidential. The commenters noted that in these reporting requirements, EPA is requesting detailed information on process characteristics, equipment types and equipment performance parameters that are likely to represent sensitive intellectual property for semiconductor manufacturers and their equipment suppliers.

Response: The EPA appreciates the input provided by the commenters regarding the CBI determinations related to the Triennial Technology Assessment Report. In the preamble to the proposed amendments to subpart I, we indicated that we were proposing five data elements under 40 CFR 98.96(y) as CBI because the data elements are likely to reveal information regarding process-specific data or new technologies or advances in production processes that could be used by a competitor. The information required by these five data elements is not emission data and is likely to reveal potentially sensitive information about individual facilities because it is likely to include information about recent process technology developed and adopted by the facilities, including proprietary process technology that would not be revealed otherwise. The commenter questioning these determinations did not provide additional information that would alter the EPA's decision.

The EPA recognizes the first commenter's concern that without access to the detailed information provided in those data elements, public stakeholders may be unable to evaluate industry claims regarding technology evolution and EPA's judgment regarding whether it is appropriate to update the Subpart I default emission factors and DRE values. However, the EPA has had to reach a balance between public access to data and the protection of confidential business information. Over time and based on careful consideration and analysis, EPA may be able to aggregate sensitive information on an industry-wide basis that would allow stakeholders to evaluate industry claims and EPA decisions regarding the effects of new technology on GHG emissions. In addition, annual emissions data submitted as part of regular annual reporting to the GHGRP and measurements of emission factors and DRE values submitted as part of the triennial technology reviews would not be considered CBI and could also be analyzed by stakeholders to evaluate industry claims and EPA judgments on changes in technology that affect emissions.

For comments and responses regarding confidentiality determinations for other new and revised subpart I data elements, please refer to the document titled ''Reporting of Greenhouse Gases—Technical Revisions to the Electronics Manufacturing Category of the Greenhouse Gas Reporting Rule: EPA's Response to Public Comment'' in Docket EPA–HQ–OAR–2011–0028.

IV. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

The EPA prepared an analysis of the potential costs associated with this final action. This analysis is contained in the Economics Impact Analysis (EIA), ''Final Amendments and Confidentiality Determinations for Subpart I EIA.'' A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. Overall, the EPA has concluded that the costs of the changes will significantly reduce subpart I compliance costs. Specifically, the proposed changes will reduce nationwide compliance costs in the first year by 37 percent ($2.7 million to $1.7 million) and by 73 percent in the second year ($6.4 million to $1.7 million). The confidentiality determinations for new and revised data elements do not increase the compliance costs of the final rule.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. As previously mentioned, this action finalizes amended reporting methodologies in subpart I, confidentiality determinations for reported data elements, and amendments to subpart A to reflect changes to the reporting requirements in subpart I. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in subpart I, under 40 CFR part 98, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and has assigned OMB control number 2060–0650 for subpart I. The OMB control numbers for the EPA's regulations in 40 CFR are listed at 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, ''small entity'' is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The small entities directly regulated by this final rule are facilities included in NAICS codes for Semiconductor and Related Device Manufacturing (334413) and Other Computer Peripheral Equipment Manufacturing (334119).

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule.

This action (1) amends monitoring and calculation methodologies in subpart I; (2) assigns subpart I data reporting elements into CBI data categories; and (3) amends subpart A to reflect final changes to the reporting requirements in subpart I. In this final rule, the EPA is taking several steps to reduce the impact of Part 98 on small entities. For example, the EPA is removing the recipe-specific reporting requirements for subpart I, which the Petitioner identified by the Petitioner as economically and technically burdensome. In addition, the EPA has provided a number of flexibilities in this final rule, which allow reporters to choose the methodologies that are least burdensome for their facility. Additional information can be found in the docket (see file ''Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions F-Gases: Subpart I *Final Report,*'' August 2012). We have therefore concluded that this final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This action (1) Amends monitoring and calculation methodologies in subpart I; (2) assigns subpart I data reporting elements into CBI data categories; and (3) amends subpart A to reflect proposed changes to the reporting requirements in subpart I. In some cases, the EPA has increased flexibility in the selection of methods used for calculating and reporting GHGs. This action also revises specific provisions to provide clarity on what is to be reported. These revisions do not add additional burden on reporters but offer flexibility. As part of the process of finalization of the subpart I rule, the EPA undertook specific steps to evaluate the effect of those final rules on small entities. Based on the final amendments to subpart I provisions, burden will stay the same or decrease, therefore the EPA's determination finding of no significant economic impact on a substantial number of small entities has not changed. Thus, this action is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. No small government entities are engaged in the electronics manufacturing processes that are subject to reporting under subpart I and which would be affected by these final rule amendments.

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 States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

This action, which amends calculation and reporting methodologies in subpart I, applies to only certain electronics manufacturers. No State or local government facilities are known to be engaged in the activities that are affected by the provisions in this final rule. This action also does not limit the

power of states or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action. For a more detailed discussion about how Part 98 relates to existing state programs, please see Section II of the preamble to the final rule, Mandatory Reporting of Greenhouse Gases (74 FR 56266, October 30, 2009).

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action (1) Amends monitoring and calculation methodologies in subpart I; (2) assigns subpart I data reporting elements into CBI data categories; and (3) amends subpart A to reflect changes to the reporting requirements in subpart I. No tribal facilities are known to be engaged in the activities affected by this action. Thus, Executive Order 13175 does not apply to this action. For a summary of the EPA's consultations with tribal governments and representatives, see Section VIII.F of the preamble to the final rule, Mandatory Reporting of Greenhouse Gases (74 FR 56371, October 30, 2009).

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to only 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 (1) Amends monitoring and calculation methodologies in subpart I; (2) assigns subpart I data reporting elements into CBI data categories; and (3) amends subpart A to reflect changes to the reporting requirements in subpart I. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

This action, which amends monitoring and calculation methodologies in subpart I, involves technical standards. The EPA is including a stack testing option that involves using the following EPA reference methods:

- Method 1 or 1A at 40 CFR part 60, appendix A–1, to select sampling port locations and the number of traverse points in the exhaust stacks.
- Method 2, 2A, 2C, 2D, 2F, or 2G at 40 CFR part 60, appendix A–1 and A–2, to determine gas velocity and volumetric flow rate in the exhaust stacks.
- Method 3, 3A, or 3B at 40 CFR part 60, appendix A–2, to determine the gas molecular weight of the exhaust using the same sampling site and at the same time as the F–GHG sampling is performed.
- Method 4 at 40 CFR part 60, appendix A–3, to measure gas moisture content in the exhaust stacks.
- Method 301 at 40 CFR part 63, appendix A, to perform field validations of alternative methods of measuring F–GHG emissions and abatement system DRE.
- Method 320 at 40 CFR part 63, appendix A, to measure the concentration of F–GHG in the stack exhaust.

Consistent with the NTTAA, the EPA conducted searches to identify VCS in addition to these EPA methods. The EPA conducted searches for VCS from at least three different voluntary consensus standards bodies, including the following: American Society of Testing and Materials (ASTM), American Society of Mechanical Engineers (ASME), and International SEMATECH Manufacturing Initiative (ISMI). No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, or 2G. The method ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses, is not cited in this final rule for its manual method for measuring the oxygen, carbon dioxide and carbon monoxide content of the exhaust gas. ASME PTC 19.10–1981 is an acceptable alternative to EPA Methods 3A and 3B for the manual procedures only, and not the instrumental procedures. The VCS ASTM D6348–03, Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy, has been reviewed by the EPA as a potential alternative to EPA Method 320; and, in light of public comments received on the proposed rule, we acknowledge that several existing regulations list both EPA Method 320 and ASTM D6348–03 as acceptable methods. We also acknowledge the efficiency of ASTM D6348–03 as compared to EPA Method 320. For these reasons, we are allowing, in the final amendments, the use of ASTM D6348–03 with the requirements described in Section II.A.1 of this preamble and 40 CFR 98.94(j) of the final rule.

This rule revises the current subpart I provisions for determining abatement system DRE to incorporate language based on methods adapted from the ISMI 2009 Guideline for Environmental Characterization of Semiconductor Process Equipment—Revision 2. We are incorporating applicable portions of the ISMI 2009 Guideline into the rule in Appendix A to Subpart I. The EPA is not incorporating by reference the entire ISMI 2009 Guideline because the ISMI 2009 Guidelines have not been subject to the same level of peer review and validation as other alternative standards (e.g., ASTM or ASME standards). Therefore, we are incorporating only those portions of the 2009 ISMI Guideline that the EPA has determined are needed to provide flexibility and reduce burden in subpart I.

The EPA identified no other VCS that were potentially applicable for subpart I in lieu of EPA reference methods. Therefore, the EPA is not adopting other standards for this purpose. For the methods required or referenced by the final rule, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications or procedures, as specified in proposed 40 CFR part 98, subpart I.

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.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action addresses only reporting and recordkeeping procedures.

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. The 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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on January 1, 2014.

List of Subjects 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 16, 2013.

Gina McCarthy,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 98—MANDATORY GREENHOUSE GAS REPORTING

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 2. Section 98.7 is amended by:

■ a. Revising paragraphs (e)(30), (m)(3), and (n)(1); and

■ b. Removing and reserving paragraph (n)(2).

The revisions read as follows:

§ 98.7 What standardized methods are incorporated by reference into this part?

* * * * *

(e) * * *

(30) ASTM D6348–03 Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, IBR approved for § 98.54(b), Table I–9 to subpart I of this part, § 98.224(b), and § 98.414(n).

* * * * *

(m) * * *

(3) Protocol for Measuring Destruction or Removal Efficiency (DRE) of Fluorinated Greenhouse Gas Abatement Equipment in Electronics Manufacturing, Version 1, EPA–430–R–10–003, March 2010 (EPA 430–R–10–003), *http://www.epa.gov/semiconductor-pfc/documents/dre_protocol.pdf,* IBR approved for § 98.94(f)(4)(i), § 98.94(g)(3), § 98.97(d)(4), § 98.98, Appendix A to subpart I of this part, § 98.124(e)(2), and § 98.414(n)(1).

* * * * *

(n) * * *

(1) Guideline for Environmental Characterization of Semiconductor Process Equipment, International SEMATECH Manufacturing Initiative Technology Transfer #06124825A–ENG, December 22, 2006 (International SEMATECH #06124825A–ENG), IBR approved for § 98.96(y)(3)(i).

* * * * *

Table A–7 to subpart A [Amended]

■ 3. Table A–7 to subpart A of part 98 is amended by removing the entries for subpart I ''98.96(f)(1),'' ''98.96(g),'' ''98.96(h),'' ''98.96(i),'' ''98.96(j),'' ''98.96(k),'' ''98.96(l),'' ''98.96(n),'' ''98.96(o),'' ''98.96(q)(2),'' ''98.96(q)(3),'' ''98.96(q)(5)(iv),'' and ''98.96(r)'', ''98.96(s)''.

Subpart I—[Amended]

■ 4. Section 98.91 is amended by revising the definitions of ''C_i'' in Equation I–3 of paragraph (a)(3) and ''W_x'' in Equation I–5 of paragraph (b).

The revisions read as follows:

§ 98.91 Reporting threshold.

(a) * * *

(3) * * *

C_i = Annual fluorinated GHG (input gas i) purchases or consumption (kg). Only gases that are used in PV manufacturing processes listed at § 98.90(a)(1) through (a)(4) that have listed GWP values in Table A–1 to subpart A of this part must be considered for threshold applicability purposes.

* * * * *

(b) * * *

W_X = Maximum substrate starts of fab f in month x (m^2 per month).

* * * * *

■ 5. Section 98.92 is amended by:

■ a. Revising paragraphs (a) introductory text and (a)(1);

■ b. Removing and reserving paragraphs (a)(2) and (a)(3); and

■ c. Revising paragraph (a)(6).

The revisions read as follows:

§ 98.92 GHGs to report.

(a) You must report emissions of fluorinated GHGs (as defined in § 98.6), N_2O, and fluorinated heat transfer fluids (as defined in § 98.98). The fluorinated GHGs and fluorinated heat transfer fluids that are emitted from electronics manufacturing production processes include, but are not limited to, those listed in Table I–2 to this subpart. You must individually report, as appropriate:

(1) Fluorinated GHGs emitted.

* * * * *

(6) All fluorinated GHGs and N_2O consumed.

* * * * *

■ 6. Section 98.93 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Revising paragraph (c) introductory text and the definitions of ''C_i'', ''I_{Bi}''; ''I_{Ei}'', ''A_i'', and ''D_i'' in Equation I–11 of paragraph (c);

■ c. Revising paragraph (d) introductory text and the definitions of ''D_i'', ''h_{iI}'', ''F_{iI}'', ''X_i'', and ''M'' in Equation I–12 of paragraph (d);

■ d. Revising paragraph (e) introductory text and the definitions of ''$C_{i,j}$'', ''$f_{i,j}$'', ''C_i'', and ''j'' in Equation I–13 of paragraph (e);

■ e. Removing and reserving paragraph (f);

■ f. Revising paragraph (g);

■ g. Revising paragraph (h) introductory text and the definitions of ''EHi'', ''I_{iB}'', ''P_i'', ''N_i'', ''R_i'', ''I_{iE}'', and ''D_i'' in Equation I–16 of introductory paragraph (h);

■ h. Removing and reserving paragraph (h)(2); and

■ i. Adding paragraph (i).

The revisions and addition read as follows:

§ 98.93 Calculating GHG emissions.

(a) You must calculate total annual emissions of each fluorinated GHG emitted by electronics manufacturing production processes from each fab (as defined in § 98.98) at your facility,

including each input gas and each by-product gas. You must use either default gas utilization rates and by-product formations rates according to the procedures in paragraph (a)(1), (a)(2), or (a)(6) of this section, as appropriate, or the stack test method according to paragraph (i) of this section, to calculate emissions of each input gas and each by-product gas.

(1) If you manufacture semiconductors, you must adhere to the procedures in paragraphs (a)(2)(i) through (iii) of this section. You must calculate annual emissions of each input gas and of each by-product gas using Equations I–6 and I–7, respectively. If your fab uses less than 50 kg of a fluorinated GHG in one reporting year, you may calculate emissions as equal to your fab's annual consumption for that specific gas as calculated in Equation I–11 of this subpart, plus any by-product emissions of that gas calculated under this paragraph (a).

$$\mathrm{Pr}\,ocesstypeE_i = \sum_{j=1}^{N} E_{ij} \qquad \text{(Eq. I-6)}$$

Where:

$ProcesstypeE_i$ = Annual emissions of input gas i from the process type on a fab basis (metric tons).

E_{ij} = Annual emissions of input gas i from process sub-type or process type j as calculated in Equation I–8 of this subpart (metric tons).

N = The total number of process sub-types j that depends on the electronics manufacturing fab and emission calculation methodology. If E_{ij} is calculated for a process type j in Equation I–8 of this subpart, N = 1.

i = Input gas.

j = Process sub-type or process type.

$$\mathrm{Pr}\,ocesstypeBE_k = \sum_{j=1}^{N}\sum_{i} BE_{ijk} \qquad \text{(Eq. I-7)}$$

Where:

$ProcesstypeBE_k$ = Annual emissions of by-product gas k from the processes type on a fab basis (metric tons).

BE_{ijk} = Annual emissions of by-product gas k formed from input gas i used for process sub-type or process type j as calculated in Equation I–9 of this subpart (metric tons).

N = The total number of process sub-types j that depends on the electronics manufacturing fab and emission calculation methodology. If BE_{ijk} is calculated for a process type j in Equation I–9 of this subpart, N = 1.

i = Input gas.

j = Process sub-type, or process type.

k = By-product gas.

(i) You must calculate annual fab-level emissions of each fluorinated GHG used for the plasma etching/wafer cleaning process type using default utilization and by-product formation rates as shown in Table I–3 or I–4 of this subpart, and by using Equations I–8 and I–9 of this subpart.

$$E_{ij} = C_{ij} * \left(1 - U_{ij}\right) * \left(1 - \left[(a]_{ij} * d_{ij} * UT_{ij}\right)\right) * 0.001 \qquad \text{(Eq. I-8)}$$

Where:

E_{ij} = Annual emissions of input gas i from process sub-type or process type j, on a fab basis (metric tons).

C_{ij} = Amount of input gas i consumed for process sub-type or process type j, as calculated in Equation I–13 of this subpart, on a fab basis (kg).

U_{ij} = Process utilization rate for input gas i for process sub-type or process type j (expressed as a decimal fraction).

a_{ij} = Fraction of input gas i used in process sub-type or process type j with abatement systems, on a fab basis (expressed as a decimal fraction).

d_{ij} = Fraction of input gas i destroyed or removed in abatement systems connected to process tools where process sub-type, or process type j is used, on a fab basis (expressed as a decimal fraction). This is zero unless the facility adheres to the requirements in § 98.94(f).

UT_{ij} = The average uptime factor of all abatement systems connected to process tools in the fab using input gas i in process sub-type or process type j, as calculated in Equation I–15 of this subpart, on a fab basis (expressed as a decimal fraction).

0.001 = Conversion factor from kg to metric tons.

i = Input gas.

j = Process sub-type or process type.

$$\cancel{BE_{ijk} = B_{ijk} * C_{ij} * (1 - a_{ij} * d_{jk}) * 0.001}$$

$$BE_{ijk} = B_{ijk} * C_{ij} * \left(1 - \left(a_{ij} * d_{jk} * UT_{ijk}\right)\right) * 0.001 \qquad \text{(Eq. I-9)}$$

Where:

BE_{ijk} = Annual emissions of by-product gas k formed from input gas i from process sub-type or process type j, on a fab basis (metric tons).

B_{ijk} = By-product formation rate of gas k created as a by-product per amount of input gas i (kg) consumed by process sub-type or process type j (kg).

C_{ij} = Amount of input gas i consumed for process sub-type, or process type j, as calculated in Equation I–13 of this subpart, on a fab basis (kg).

a_{ij} = Fraction of input gas i used for process sub-type, or process type j with abatement systems, on a fab basis (expressed as a decimal fraction).

d_{jk} = Fraction of by-product gas k destroyed or removed in abatement systems connected to process tools where process

sub-type, or process type j is used, on a fab basis (expressed as a decimal fraction). This is zero unless the facility adheres to the requirements in § 98.94(f).

UT_{ijk} = The average uptime factor of all abatement systems connected to process tools in the fab emitting by-product gas k, formed from input gas i in process sub-type or process type j, on a fab basis (expressed as a decimal fraction). For this equation, UT_{ijk} is assumed to be equal to UT_{ij} as calculated in Equation I–15 of this subpart.

0.001 = Conversion factor from kg to metric tons.

i = Input gas.

j = Process sub-type or process type.

k = By-product gas.

(ii) You must calculate annual fab-level emissions of each fluorinated GHG used for each of the process sub-types associated with the chamber cleaning process type, including in-situ plasma chamber clean, remote plasma chamber clean, and in-situ thermal chamber clean, using default utilization and by-product formation rates as shown in Table I–3 or I–4 of this subpart, and by using Equations I–8 and I–9 of this subpart.

(iii) If default values are not available for a particular input gas and process type or sub-type combination in Tables I–3 or I–4, you must follow the procedures in paragraph (a)(6) of this section.

(2) If you manufacture MEMS, LCDs, or PVs, you must calculate annual fab-level emissions of each fluorinated GHG used for the plasma etching and chamber cleaning process types using default utilization and by-product formation rates as shown in Table I–5, I–6, or I–7 of this subpart, as appropriate, and by using Equations I–8 and I–9 of this subpart. If default values are not available for a particular input gas and process type or sub-type combination in Tables I–5, I–6, or I–7, you must follow the procedures in paragraph (a)(6) of this section. If your fab uses less than 50 kg of a fluorinated GHG in one reporting year, you may calculate emissions as equal to your fab's annual consumption for that specific gas as calculated in Equation I–11 of this subpart, plus any by-product emissions of that gas calculated under this paragraph (a).

(3) [Reserved]

(4) [Reserved]

(5) [Reserved]

(6) If you are required, or elect, to perform calculations using default emission factors for gas utilization and by-product formation rates according to the procedures in paragraphs (a)(1) or (a)(2) of this section, and default values are not available for a particular input gas and process type or sub-type combination in Tables I–3, I–4, I–5, I–6, or I–7, you must use the utilization and by-product formation rates of zero and use Equations I–8 and I–9 of this subpart.

(b) You must calculate annual fab-level N_2O emissions from all chemical vapor deposition processes and from the aggregate of all other electronics manufacturing production processes using Equation I–10 of this subpart and the methods in paragraphs (b)(1) and (2) of this section. If your fab uses less than 50 kg of N_2O in one reporting year, you may calculate fab emissions as equal to your fab's annual consumption for N_2O as calculated in Equation I–11 of this subpart.

$$E(N_2O)_j = C_{N_2O,j} * \left(1 - U_{N_2O,j}\right) * \left(1 - \left(a_{N_2O,j} * d_{N_2O,j} * UT_{N2O}\right)\right) * 0.001 \qquad \text{(Eq. I-10)}$$

Where:

$E(N_2O)_j$ = Annual emissions of N_2O for N_2O-using process j, on a fab basis (metric tons).

$C_{N2O,j}$ = Amount of N_2O consumed for N_2O-using process j, as calculated in Equation I–13 of this subpart and apportioned to N_2O process j, on a fab basis (kg).

$U_{N2O,j}$ = Process utilization factor for N_2O-using process j (expressed as a decimal fraction) from Table I–8 of this subpart.

$a_{N2O,j}$ = Fraction of N_2O used in N_2O-using process j with abatement systems, on a fab basis (expressed as a decimal fraction).

$d_{N2O,j}$ = Fraction of N_2O for N_2O-using process j destroyed or removed in abatement systems connected to process tools where process j is used, on a fab basis (expressed as a decimal fraction). This is zero unless the facility adheres to the requirements in § 98.94(f).

UT_{N2O} = The average uptime factor of all the abatement systems connected to process tools in the fab that use N_2O, as calculated in Equation I–15 of this subpart, on a fab basis (expressed as a decimal fraction). For purposes of calculating the abatement system uptime for N_2O using process tools, in Equation I–15 of this subpart, the only input gas i is N_2O, j is the N_2O using process, and p is the N_2O abatement system connected to the N_2O using tool.

0.001 = Conversion factor from kg to metric tons.

j = Type of N_2O-using process, either chemical vapor deposition or all other N_2O-using manufacturing processes.

(1) You must use the factor for N_2O utilization for chemical vapor deposition processes as shown in Table I–8 to this subpart.

(2) You must use the factor for N_2O utilization for all other manufacturing production processes other than chemical vapor deposition as shown in Table I–8 to this subpart.

(c) You must calculate total annual input gas i consumption on a fab basis for each fluorinated GHG and N_2O using Equation I–11 of this subpart. Where a gas supply system serves more than one fab, Equation I–11 is applied to that gas which has been apportioned to each fab served by that system using the apportioning factors determined in accordance with § 98.94(c).

* * * * *

C_i = Annual consumption of input gas i, on a fab basis (kg per year).

I_{Bi} = Inventory of input gas i stored in containers at the beginning of the reporting year, including heels, on a fab basis (kg). For containers in service at the beginning of a reporting year, account for the quantity in these containers as if they were full.

I_{Ei} = Inventory of input gas i stored in containers at the end of the reporting year, including heels, on a fab basis (kg). For containers in service at the end of a reporting year, account for the quantity in these containers as if they were full.

A_i = Acquisitions of input gas i during the year through purchases or other transactions, including heels in containers returned to the electronics manufacturing facility, on a fab basis (kg).

D_i = Disbursements of input gas i through sales or other transactions during the year, including heels in containers returned by the electronics manufacturing facility to the chemical supplier, as calculated using Equation I–12 of this subpart, on a fab basis (kg).

* * * * *

(d) You must calculate disbursements of input gas i using fab-wide gas-specific heel factors, as determined in § 98.94(b), and by using Equation I–12 of this subpart. Where a gas supply system serves more than one fab, Equation I–12 is applied to that gas which has been apportioned to each fab served by that system using the apportioning factors determined in accordance with § 98.94(c).

* * * * *

Di = Disbursements of input gas i through sales or other transactions during the

reporting year on a fab basis, including heels in containers returned by the electronics manufacturing fab to the gas distributor (kg).

h_{il} = Fab-wide gas-specific heel factor for input gas i and container size and type l (expressed as a decimal fraction), as determined in § 98.94(b). If your fab uses less than 50 kg of a fluorinated GHG or N_2O in one reporting year, you may assume that any hil for that fluorinated GHG or N_2O is equal to zero.

* * * * *

F_{il} = Full capacity of containers of size and type l containing input gas i, on a fab basis (kg).

Xi = Disbursements under exceptional circumstances of input gas i through sales or other transactions during the year, on a fab basis (kg). These include returns of containers whose contents have been weighed due to an exceptional circumstance as specified in § 98.94(b)(4).

* * * * *

M = The total number of different sized container types on a fab basis. If only one size and container type is used for an input gas i, M=1.

(e) You must calculate the amount of input gas i consumed, on a fab basis, for each process sub-type or process type j, using Equation I–13 of this subpart. Where a gas supply system serves more than one fab, Equation I–13 is applied to that gas which has been apportioned to each fab served by that system using the apportioning factors determined in accordance with § 98.94(c). If you elect to calculate emissions using the stack test method in paragraph (i) of this section, you must calculate the amount of input gas i consumed on the applicable basis by using an appropriate apportioning factor. For example, when calculating fab-level emissions of each fluorinated GHG consumed using Equation I–21 of this section, you must substitute the term fij with the appropriate apportioning factor to calculate the total consumption of each fluorinated GHG in tools that are vented to stack systems that are tested.

* * * * *

$C_{i,j}$ = The annual amount of input gas i consumed, on a fab basis, for process sub-type or process type j (kg).

$f_{i,j}$ = Process sub-type-specific or process type-specific j, input gas i apportioning factor (expressed as a decimal fraction), as determined in accordance with § 98.94(c).

C_i = Annual consumption of input gas i, on a fab basis, as calculated using Equation I–11 of this subpart (kg).

* * * * *

j = Process sub-type or process type.

* * * * *

(g) If you report controlled emissions pursuant to § 98.94(f), you must calculate the uptime of all the abatement systems for each combination of input gas or by-product gas, and process sub-type or process type, by using Equation I–15 of this subpart.

$$UT_{ij} = 1 - \sum_{p} \frac{Td_{ijp}}{\sum_p UT_{ijp}} \qquad \text{(Eq. I-15)}$$

Where:

UT_{ij} = The average uptime factor of all abatement systems connected to process tools in the fab using input gas i in process sub-type or process type j (expressed as a decimal fraction).

Td_{ijp} = The total time, in minutes, that abatement system p, connected to process tool(s) in the fab using input gas i in process sub-type or process type j, is not in operational mode, as defined in § 98.98, when at least one of the tools connected to abatement system p is in operation.

UT_{ijp} = Total time, in minutes per year, in which abatement system p has at least one associated tool in operation. For determining the amount of tool operating time, you may assume that tools that were installed for the whole of the year were operated for 525,600 minutes per year. For tools that were installed or uninstalled during the year, you must prorate the operating time to account for the days in which the tool was not installed; treat any partial day that a tool was installed as a full day (1,440 minutes) of tool operation. For an abatement system that has more than one connected tool, the tool operating time is 525,600 minutes per year if at least one tool was installed at all times throughout the year. If you have tools that are idle with no gas flow through the tool for part of the year, you may calculate total tool time using the actual time that gas is flowing through the tool.

i = Input gas.

j = Process sub-type or process type.

p = Abatement system.

(h) If you use fluorinated heat transfer fluids, you must calculate the annual emissions of fluorinated heat transfer fluids on a fab basis using the mass balance approach described in Equation I–16 of this subpart.

* * * * *

EH_i = Emissions of fluorinated heat transfer fluid i, on a fab basis (metric tons/year).

* * * * *

I_{iB} = Inventory of fluorinated heat transfer fluid i, on a fab basis, in containers other than equipment at the beginning of the reporting year (in stock or storage) (l). The inventory at the beginning of the reporting year must be the same as the inventory at the end of the previous reporting year.

P_i = Acquisitions of fluorinated heat transfer fluid i, on a fab basis, during the reporting year (l), including amounts purchased from chemical suppliers, amounts purchased from equipment suppliers with or inside of equipment, and amounts returned to the facility after off-site recycling.

N_i = Total nameplate capacity (full and proper charge) of equipment that uses fluorinated heat transfer fluid i and that is newly installed in the fab during the reporting year (l).

R_i = Total nameplate capacity (full and proper charge) of equipment that uses fluorinated heat transfer fluid i and that is removed from service in the fab during the reporting year (l).

I_{iE} = Inventory of fluorinated heat transfer fluid i, on a fab basis, in containers other than equipment at the end of the reporting year (in stock or storage) (l). The inventory at the beginning of the reporting year must be the same as the inventory at the end of the previous reporting year.

D_i = Disbursements of fluorinated heat transfer fluid i, on a fab basis, during the reporting year, including amounts returned to chemical suppliers, sold with or inside of equipment, and sent off-site for verifiable recycling or destruction (l). Disbursements should include only amounts that are properly stored and transported so as to prevent emissions in transit.

* * * * *

(i) *Stack Test Method.* As an alternative to the default emission factor method in paragraph (a) of this section, you may calculate fab-level fluorinated GHG emissions using fab-specific emission factors developed from stack testing. To use the method in this paragraph, you must first make a preliminary estimate of the fluorinated GHG emissions from each stack system in the fab under paragraph (i)(1) of this section. You must then compare the preliminary estimate for each stack system to the criteria in paragraph (i)(2) of this section to determine whether the

stack system meets the criteria for using the stack test method described in paragraph (i)(3) of this section or whether the stack system meets the criteria for using the method described in paragraph (i)(4) of this section to estimate emissions from the stack systems that are not tested.

(1) *Preliminary estimate of emissions by stack system in the fab.* You must calculate a preliminary estimate of the total annual emissions, on a metric ton CO_2e basis, of all fluorinated GHG from each stack system in the fab using default utilization and by-product formation rates as shown in Table I–11, I–12, I–13, I–14, or I–15 of this subpart, as applicable, and by using Equations I–8 and I–9 of this subpart. You must include any intermittent low-use fluorinated GHGs, as defined in § 98.98 of this subpart, in any preliminary estimates. When using Equations I–8 and I–9 of this subpart for the purposes of this paragraph (i)(1), you must also adhere to the procedures in paragraphs (i)(1)(i) to (iv) of this section to calculate preliminary estimates.

(i) When you are calculating preliminary estimates for the purpose of this paragraph (i)(1), you must consider the subscript ''j'' in Equations I–8 and I–9, and I–13 of this subpart to mean ''stack system'' instead of ''process sub-type or process type.'' For the value of a_{ij}, the fraction of input gas i that is used in tools with abatement systems, for use in Equations I–8 and I–9, you may use the ratio of the number of tools using input gas i that have abatement systems that are vented to the stack system for which you are calculating the preliminary estimate to the total number of tools using input gas i that are vented to that stack system, expressed as a decimal fraction. In calculating the preliminary estimates, you must account for the effect of any fluorinated GHG abatement system meeting the definition of abatement system in § 98.98. You may use this approach to determining a_{ij} only for this preliminary estimate.

(ii) You must use representative data from the previous reporting year to estimate the consumption of input gas i as calculated in Equation I–13 of this subpart and the fraction of input gas i destroyed in abatement systems for each stack system as calculated by Equation I–24 of this subpart. If you were not required to submit an annual report under subpart I for the previous reporting year and data from the previous reporting year are not available, you may estimate the consumption of input gas i and the fraction of input gas i destroyed in abatement systems based on representative operating data from a period of at least 30 days in the current reporting year. When calculating the consumption of input gas i using Equation I–13 of this subpart, the term ''f_{ij}'' is replaced with the ratio of the number of tools using input gas i that are vented to the stack system for which you are calculating the preliminary estimate to the total number of tools in the fab using input gas i, expressed as a decimal fraction. You may use this approach to determining f_{ij} only for this preliminary estimate.

(iii) You must use representative data from the previous reporting year to estimate the total uptime of all abatement systems for the stack system as calculated by Equation I–23 of this subpart, instead of using Equation I–15 of this subpart to calculate the average uptime factor. If you were not required to submit an annual report under subpart I for the previous reporting year and data from the previous reporting year are not available, you may estimate the total uptime of all abatement systems for the stack system based on representative operating data from a period of at least 30 days in the current reporting year.

(iv) If you anticipate an increase or decrease in annual consumption or emissions of any fluorinated GHG, or the number of tools connected to abatement systems greater than 10 percent for the current reporting year compared to the previous reporting year, you must account for the anticipated change in your preliminary estimate. You may account for such a change using a quantifiable metric (e.g., the ratio of the number tools that are expected to be vented to the stack system in the current year as compared to the previous reporting year, ratio of the expected number of wafer starts in the current reporting year as compared to the previous reporting year), engineering judgment, or other industry standard practice.

(2) *Method selection for stack systems in the fab.* If the calculations under paragraph (i)(1) of this section, as well as any subsequent annual measurements and calculations under this subpart, indicate that the stack system meets the criteria in paragraph (i)(2)(i) through (iii) of this section, then you may comply with either paragraph (i)(3) of this section (stack test method) or paragraph (i)(4) of this section (method to estimate emissions from the stack systems that are not tested). If the stack system does not meet all three criteria in paragraph (i)(2)(i) through (iii) of this section, then you must comply with the stack test method specified in paragraph (i)(3) of this section. For those fluorinated GHGs in Tables I–11, I–12, I–13, I–14, and I–15 of this subpart for which Table A–1 to subpart A of this part does not define a GWP value, you must use a value of 2,000 for the GWP in calculating metric ton CO_2e for that fluorinated GHG for use in paragraphs (i)(2)(i) through (iii) of this section.

(i) The sum of annual emissions of fluorinated GHGs from all of the combined stack systems that are not tested in the fab must be less than 10,000 metric ton CO_2e per year.

(ii) When all stack systems in the fab are ordered from lowest to highest emitting in metric ton CO_2e of fluorinated GHG per year, each of the stack systems that is not tested must be within the set of the fab's lowest emitting fluorinated GHG stack systems that together emit 15 percent or less of total CO_2e fluorinated GHG emissions from the fab.

(iii) Fluorinated GHG emissions from each of the stack systems that is not tested can only be attributed to particular process tools during the test (that is, the stack system that is not tested cannot be used as an alternative emission point or bypass stack system from other process tools not attributed to the untested stack system).

(3) *Stack system stack test method.* For each stack system in the fab for which testing is required, measure the emissions of each fluorinated GHG from the stack system by conducting an emission test. In addition, measure the fab-specific consumption of each fluorinated GHG by the tools that are vented to the stack systems tested. Measure emissions and consumption of each fluorinated GHG as specified in § 98.94(j). Develop fab-specific emission factors and calculate fab-level fluorinated GHG emissions using the procedures specified in paragraph (i)(3)(i) through (viii) of this section. All emissions test data and procedures used in developing emission factors must be documented and recorded according to § 98.97.

(i) You must measure, and, if applicable, apportion the fab-specific fluorinated GHG consumption of the tools that are vented to the stack systems that are tested during the emission test as specified in § 98.94(j)(3). Calculate the consumption for each fluorinated GHG for the test period.

(ii) You must calculate the emissions of each fluorinated GHG consumed as an input gas using Equation I–17 of this subpart and each fluorinated GHG formed as a by-product gas using Equation I–18 of this subpart and the procedures specified in paragraphs (i)(3)(ii)(A) through (E) of this section. If

a stack system is comprised of multiple stacks, you must sum the emissions from each stack in the stack system when using Equation I–17 or Equation I–18 of this subpart.

$$E_{is} = MW_i * Q_j * \frac{1}{SV} * \frac{1}{10^3} * \sum_{s=1}^{N} \frac{X_{ism}}{10^9} * \Delta t_m \quad \text{(Eq. I-17)}$$

Where:

E_{is} = Total fluorinated GHG input gas i, emitted from stack system s, during the sampling period (kg).

X_{ism} = Average concentration of fluorinated GHG input gas i in stack system s, during the time interval m (ppbv).

MW_i = Molecular weight of fluorinated GHG input gas i (g/g-mole).

Q_s = Flow rate of the stack system s, during the sampling period (m^3/min).

SV = Standard molar volume of gas (0.0240 m^3/g-mole at 68 °F and 1 atm).

Δt_m = Length of time interval m (minutes). Each time interval in the FTIR sampling period must be less than or equal to 60 minutes (for example an 8 hour sampling period would consist of at least 8 time intervals).

$1/10^3$ = Conversion factor (1 kilogram/1,000 grams).

i = Fluorinated GHG input gas.

s = Stack system.

N = Total number of time intervals m in sampling period.

m = Time interval.

$$E_{ks} = MW_k * Q_s * \frac{1}{SV} * \frac{1}{10^3} * \sum_{m=1}^{N} \frac{X_{ksm}}{10^9} * \Delta t_m \quad \text{(Eq. I-18)}$$

Where:

E_{ks} = Total fluorinated GHG by-product gas k, emitted from stack system s, during the sampling period (kg).

X_{ks} = Average concentration of fluorinated GHG by-product gas k in stack system s, during the time interval m (ppbv).

MW_k = Molecular weight of the fluorinated GHG by-product gas k (g/g-mole).

Q_s = Flow rate of the stack system s, during the sampling period (m^3/min).

SV = Standard molar volume of gas (0.0240 m^3/g-mole at 68 °F and 1 atm).

Δt_m = Length of time interval m (minutes). Each time interval in the FTIR sampling period must be less than or equal to 60 minutes (for example an 8 hour sampling period would consist of at least 8 time intervals).

$1/10^3$ = Conversion factor (1 kilogram/1,000 grams).

k = Fluorinated GHG by-product gas.

s = Stack system.

N = Total number of time intervals m in sampling period.

m = Time interval.

(A) If a fluorinated GHG is consumed during the sampling period, but emissions are not detected, use one-half of the field detection limit you determined for that fluorinated GHG according to § 98.94(j)(2) for the value of ''X_{ism}'' in Equation I–17.

(B) If a fluorinated GHG is consumed during the sampling period and detected intermittently during the sampling period, use the detected concentration for the value of ''X_{ism}'' in Equation I–17 when available and use one-half of the field detection limit you determined for that fluorinated GHG according to § 98.94(j)(2) for the value of ''X_{ism}'' when the fluorinated GHG is not detected.

(C) If an expected or possible by-product, as listed in Table I–17 of this subpart, is detected intermittently during the sampling period, use the measured concentration for ''X_{ksm}'' in Equation I–18 when available and use one-half of the field detection limit you determined for that fluorinated GHG according to § 98.94(j)(2) for the value of ''X_{ksm}'' when the fluorinated GHG is not detected.

(D) If a fluorinated GHG is not consumed during the sampling period and is an expected by-product gas as listed in Table I–17 of this subpart and is not detected during the sampling period, use one-half of the field detection limit you determined for that fluorinated GHG according to § 98.94(j)(2) for the value of ''X_{ksm}'' in Equation I–18.

(E) If a fluorinated GHG is not consumed during the sampling period and is a possible by-product gas as listed in Table I–17 of this subpart, and is not detected during the sampling period, then assume zero emissions for that fluorinated GHG for the tested stack system.

(iii) You must calculate a fab-specific emission factor for each fluorinated GHG input gas consumed (in kg of fluorinated GHG emitted per kg of input gas i consumed) in the tools that vent to stack systems that are tested, as applicable, using Equation I–19 of this subpart. If the emissions of input gas i exceed the consumption of input gas i during the sampling period, then equate ''E_{is}'' to the consumption of input gas i and treat the difference between the emissions and consumption of input gas i as a by-product of the other input gases, using Equation I–20 of this subpart.

$$EF_{if} = \frac{\sum_s (E_{is})}{Activity_{if} * \left(UT_f + \left(\frac{1 - UT_f}{1 - (a_{if} * d_{if})} \right) \right)} \quad \text{(Eq. I-19)}$$

Where:

EF_{if} = Emission factor for fluorinated GHG input gas i, from fab f, representing 100 percent abatement system uptime (kg emitted/kg input gas consumed).

E_{is} = Mass emission of fluorinated GHG input gas i from stack system s, during the sampling period (kg emitted).

$Activity_{if}$ = Consumption of fluorinated GHG input gas i, for fab f, in the tools vented to the stack systems being tested, during the sampling period, as determined following the procedures specified in § 98.94(j)(3) (kg consumed).

UT_f = The total uptime of all abatement systems for fab f, during the sampling period, as calculated in Equation I–23 of this subpart (expressed as decimal fraction). If the stack system does not have abatement systems on the tools vented to the stack system, the value of this parameter is zero.
a_{if} = Fraction of fluorinated GHG input gas i used in fab f in tools with abatement systems (expressed as a decimal fraction).
d_{if} = Fraction of fluorinated GHG input gas i destroyed or removed in abatement systems connected to process tools in fab f, as calculated in Equation I–24 of this subpart (expressed as decimal fraction). If the stack system does not have abatement systems on the tools vented to the stack system, the value of this parameter is zero.
f = Fab.
i = Fluorinated GHG input gas.
s = Stack system.

(iv) You must calculate a fab-specific emission factor for each fluorinated GHG formed as a by-product (in kg of fluorinated GHG per kg of total fluorinated GHG consumed) in the tools vented to stack systems that are tested, as applicable, using Equation I–20 of this subpart. When calculating the by-product emission factor for an input gas for which emissions exceeded its consumption, exclude the consumption of that input gas from the term ''$\Sigma(Activity_{if})$.''

$$EF_{kf} = \frac{\sum_s (E_{ks})}{\sum_i (Activity_{if}) * \left(UT_f + \left(\frac{1 - UT_f}{1 - (a_f * d_{kf})} \right) \right)} \quad \text{(Eq. I-20)}$$

Where:
EF_{kf} = Emission factor for fluorinated GHG by-product gas k, from fab f, representing 100 percent abatement system uptime (kg emitted/kg of all input gases consumed in tools vented to stack systems that are tested).
E_{ks} = Mass emission of fluorinated GHG by-product gas k, emitted from stack system s, during the sampling period (kg emitted).
$Activity_{if}$ = Consumption of fluorinated GHG input gas i for fab f in tools vented to stack systems that are tested, during the sampling period as determined following the procedures specified in § 98.94(j)(3) (kg consumed).
UT_f = The total uptime of all abatement systems for fab f, during the sampling period, as calculated in Equation I–23 of this subpart (expressed as decimal fraction).
a_f = Fraction of all fluorinated input gases used in fab f in tools with abatement systems (expressed as a decimal fraction).
d_{kf} = Fraction of fluorinated GHG by-product gas k destroyed or removed in abatement systems connected to process tools in fab f, as calculated in Equation I–24 of this subpart (expressed as decimal fraction).
f = Fab.
i = Fluorinated GHG input gas.
k = Fluorinated GHG by-product gas.
s = Stack system.

(v) You must calculate annual fab-level emissions of each fluorinated GHG consumed using Equation I–21 of this section.

$$E_{if} = EF_{if} * C_{if} * UT_f + \frac{EF_{if}}{\left(1 - (a_{if} * d_{if})\right)} * C_{if} * \left(1 - UT_f\right) \quad \text{(Eq. I-21)}$$

Where:
E_{if} = Annual emissions of fluorinated GHG input gas i (kg/year) from the stack systems that are tested for fab f.
EF_{if} = Emission factor for fluorinated GHG input gas i emitted from fab f, as calculated in Equation I–19 of this subpart (kg emitted/kg input gas consumed).
C_{if} = Total consumption of fluorinated GHG input gas i in tools that are vented to stack systems that are tested, for fab f, for the reporting year, as calculated using Equation I–13 of this subpart (kg/year).
UT_f = The total uptime of all abatement systems for fab f, during the reporting year, as calculated using Equation I–23 of this subpart (expressed as a decimal fraction).
a_{if} = Fraction of fluorinated GHG input gas i used in fab f in tools with abatement systems (expressed as a decimal fraction).
d_{if} = Fraction of fluorinated GHG input gas i destroyed or removed in abatement systems connected to process tools in fab f that are included in the stack testing option, as calculated in Equation I–24 of this subpart (expressed as decimal fraction).
f = Fab.
i = Fluorinated GHG input gas.

(vi) You must calculate annual fab-level emissions of each fluorinated GHG by-product formed using Equation I–22 of this section.

$$E_{kf} = EF_{kf} * \sum_i C_{if} * UT_f + \frac{EF_{kf}}{\left(1 - (a_f * d_{kf})\right)} * \sum_i C_{if} * \left(1 - UT_f\right) \quad \text{(Eq. I-22)}$$

Where:
Ek_f = Annual emissions of fluorinated GHG by-product k (kg/year) from the stack systems that are tested for fab f.
EF_{kf} = Emission factor for fluorinated GHG by-product k, emitted from fab f, as calculated in Equation I–20 of this subpart (kg emitted/kg of all fluorinated input gases consumed).
C_{if} = Total consumption of fluorinated GHG input gas i in tools that are vented to stack systems that are tested, for fab f, for the reporting year, as calculated using Equation I–13 of this subpart.
UT_f = The total uptime of all abatement systems for fab f, during the reporting year as calculated using Equation I–23 of this subpart (expressed as a decimal fraction).
a_f = Fraction of fluorinated input gases used in fab f in tools with abatement systems (expressed as a decimal fraction).
dk_f = Fraction of fluorinated GHG by-product k destroyed or removed in abatement systems connected to process tools in fab

f that are included in the stack testing option, as calculated in Equation I–24 of this subpart (expressed as decimal fraction).
f = Fab.
i = Fluorinated GHG input gas.
k = Fluorinated GHG by-product

(vii) When using the stack testing method described in this paragraph (i), you must calculate abatement system uptime on a fab basis using Equation I–23 of this subpart. When calculating abatement system uptime for use in Equation I–19 and I–20 of this subpart, you must evaluate the variables ''Td_{pf}'' and ''UT_{pf}'' for the sampling period instead of the reporting year.

$$UT_f = 1 - \sum_p \frac{Td_{pf}}{\sum_p UT_{pf}} \qquad \text{(Eq. I-23)}$$

Where:
UT_f = The average uptime factor for all abatement systems in fab f (expressed as a decimal fraction).
Td_{pf} = The total time, in minutes, that abatement system p, connected to process tool(s) in fab f, is not in operational mode as defined in § 98.98.
UT_{pf} = Total time, in minutes per year, in which the tool(s) connected at any point during the year to abatement system p, in fab f could be in operation. For determining the amount of tool operating time, you may assume that tools that were installed for the whole of the year were operated for 525,600 minutes per year. For tools that were installed or uninstalled during the year, you must prorate the operating time to account for the days in which the tool was not installed; treat any partial day that a tool was installed as a full day (1,440 minutes) of tool operation. For an abatement system that has more than one connected tool, the tool operating time is 525,600 minutes per year if there was at least one tool installed at all times throughout the year. If you have tools that are idle with no gas flow through the tool, you may calculate total tool time using the actual time that gas is flowing through the tool.
f = Fab.
p = Abatement system.

(viii) When using the stack testing option described in this paragraph (i), you must calculate the weighted-average fraction of fluorinated input gas i destroyed or removed in abatement systems for each fab f, as applicable, by using Equation I–24 of this subpart.

$$d_{if} = \frac{\sum_j C_{ijf} * DRE_{ij}}{\sum_j C_{ijf}} \qquad \text{(Eq. I-24)}$$

Where:
d_{if} = The average weighted fraction of fluorinated GHG input gas i destroyed or removed in abatement systems in fab f (expressed as a decimal fraction).
C_{ijf} = The amount of fluorinated GHG input gas i consumed for process type j fed into abatement systems in fab f as calculated using Equation I–13 of this subpart (kg).
DRE_{ij} = Destruction or removal efficiency for fluorinated GHG input gas i in abatement systems connected to process tools where process type j is used (expressed as a decimal fraction) determined according to § 98.94(f).
f = fab.
i = Fluorinated GHG input gas.
j = Process type.

(4) *Method to calculate emissions from stack systems that are not tested.* You must calculate annual fab-level emissions of each fluorinated GHG input gas and by-product gas for those fluorinated GHG listed in paragraphs (i)(4)(i) and (ii) of this section using default utilization and by-product formation rates as shown in Tables I–11, I–12, I–13, I–14, or I–15 of this subpart, as applicable, and by using Equations I–8, I–9, and I–13 of this subpart. When using Equations I–8, I–9, and I–13 of this subpart to fulfill the requirements of this paragraph, you must use, in place of the term C_{ij} in each equation, the total consumption of each fluorinated GHG meeting the criteria in paragraph (i)(4)(i) of this section or that is used in tools vented to the stack systems that meet the criteria in paragraph (i)(4)(ii) of this section. You must use, in place of the term a_{ij}, the fraction of fluorinated GHG meeting the criteria in paragraph (i)(4)(i) of this section used in tools with abatement systems or that is used in tools with abatement systems that are vented to the stack systems that meet the criteria in paragraph (i)(4)(ii) of this section. You also must use the results of Equation I–24 of this subpart in place of the terms d_{ij} in Equation I–8 of this subpart and d_{jk} in Equation I–9 of this subpart, and use the results of Equation I–23 of this subpart in place of the results of Equation I–15 of this subpart for the term UT_{ij}.

(i) Calculate emissions from consumption of each intermittent low-use fluorinated GHG as defined in § 98.98 of this subpart using the default utilization and by-product formation rates and equations specified in paragraph (i)(4) of this section. If a fluorinated GHG was not being used during the stack testing and does not meet the definition of intermittent low-use fluorinated GHG in § 98.98, then you must test the stack systems associated with the use of that fluorinated GHG at a time when that gas is in use at a magnitude that would allow you to determine an emission factor for that gas according to the procedures specified in paragraph (i)(3) of this section.

(ii) Calculate emissions from consumption of each fluorinated GHG used in tools vented to stack systems that meet the criteria specified in paragraphs (i)(2)(i) through (i)(2)(iii) of this section, and were not tested according to the procedures in paragraph (i)(3) of this section. Calculate emissions using the default utilization and by-product formation rates and equations specified in paragraph (i)(4) of this section. If you are using a fluorinated GHG not listed in Tables I–11, I–12, I–13, I–14, or I–15 of this subpart, then you must assume utilization and by-product formation rates of zero for that fluorinated GHG.

(5) To determine the total emissions of each fluorinated GHG from each fab under this stack testing option, you must sum the emissions of each fluorinated GHG determined from the procedures in paragraph (i)(3) of this section with the emissions of the same fluorinated GHG determined from the procedures in paragraph (i)(4) of this section. Sum the total emissions of each fluorinated GHG from all fabs at your facility to determine the facility-level emissions of each fluorinated GHG.

■ 7. Section 98.94 is amended by:

■ a. Removing and reserving paragraph (a);
■ b. Revising paragraph (b), paragraph (c) introductory text, and paragraph (c)(2);
■ c. Adding paragraph (c)(3);
■ d. Removing and reserving paragraphs (d) and (e);
■ e. Revising paragraph (f);
■ f. Removing and reserving paragraphs (g)(1) and (2);
■ g. Revising paragraphs (g)(3) and (4);
■ h. Revising paragraphs (h) introductory text, (h)(3), and (i); and
■ i. Adding paragraphs (j) and (k).

The revisions and additions read as follows:

§ 98.94 Monitoring and QA/QC requirements.

* * * * *

(b) For purposes of Equation I–12 of this subpart, you must estimate fab-wide gas-specific heel factors for each container type for each gas used, according to the procedures in paragraphs (b)(1) through (b)(5) of this section. This paragraph (b) does not apply to fluorinated GHGs or N_2O that your fab uses in quantities of less than 50 kg in one reporting year and for which you calculate emissions as equal to consumption under § 98.93(a)(1), (a)(2), or (b), or for any intermittent low-use fluorinated GHG for which you calculate emissions according to § 98.93(i)(4)(i).

(1) Base your fab-wide gas-specific heel factors on the trigger point for change out of a container for each container size and type for each gas used. Fab-wide gas-specific heel factors must be expressed as the ratio of the trigger point for change out, in terms of mass, to the initial mass in the container, as determined by paragraphs (b)(2) and (3) of this section.

(2) The trigger points for change out you use to calculate fab-wide gas-specific heel factors in paragraph (b)(1) of this section must be determined by monitoring the mass or the pressure of your containers. If you monitor the pressure, convert the pressure to mass using the ideal gas law, as displayed in Equation I–25 of this subpart, with the appropriate Z value selected based upon the properties of the gas.

$$pV = ZnRT \qquad \text{(Eq. I-25)}$$

Where:

p = Absolute pressure of the gas (Pa).
V = Volume of the gas container (m^3).
Z = Compressibility factor.
n = Amount of substance of the gas (moles).
R = Gas constant (8.314 Joule/Kelvin mole).
T = Absolute temperature (K).

(3) The initial mass you use to calculate a fab-wide gas-specific heel factor in paragraph (b)(1) of this section may be based on the weight of the gas provided to you in gas supplier documents; however, you remain responsible for the accuracy of these masses and weights under this subpart.

(4) If a container is changed in an exceptional circumstance, as specified in paragraphs (b)(4)(i) and (ii) of this section, you must weigh that container or measure the pressure of that container with a pressure gauge, in place of using a heel factor to determine the residual weight of gas. When using mass-based trigger points for change out, you must determine if an exceptional circumstance has occurred based on the net weight of gas in the container, excluding the tare weight of the container.

(i) For containers with a maximum storage capacity of less than 9.08 kg (20 lbs) of gas, an exceptional circumstance is a change out point that differs by more than 50 percent from the trigger point for change out used to calculate your fab-wide gas-specific heel factor for that gas and container type.

(ii) For all other containers, an exceptional circumstance is a change out point that differs by more than 20 percent from the trigger point for change out used to calculate your fab-wide gas-specific heel factor for that gas and container type.

(5) You must re-calculate a fab-wide gas-specific heel factor if you execute a process change to modify the trigger point for change out for a gas and container type that differs by more than 5 percent from the previously used trigger point for change out for that gas and container type.

(c) You must develop apportioning factors for fluorinated GHG and N_2O consumption (including the fraction of gas consumed by process tools connected to abatement systems as in Equations I–8, I–9, I–10, I–19, I–20, I–21, and I–22 of this subpart), to use in the equations of this subpart for each input gas i, process sub-type, process type, stack system, and fab as appropriate, using a fab-specific engineering model that is documented in your site GHG Monitoring Plan as required under § 98.3(g)(5). This model must be based on a quantifiable metric, such as wafer passes or wafer starts, or direct measurement of input gas consumption as specified in paragraph (c)(3) of this section. To verify your model, you must demonstrate its precision and accuracy by adhering to the requirements in paragraphs (c)(1) and (2) of this section.

* * * * *

(2) You must demonstrate the accuracy of your fab-specific model by comparing the actual amount of input gas i consumed and the modeled amount of input gas i consumed in the fab, as follows:

(i) You must analyze actual and modeled gas consumption for a period when the fab is at a representative operating level (as defined in § 98.98) lasting at least 30 days but no more than the reporting year.

(ii) You must compare the actual gas consumed to the modeled gas consumed for one fluorinated GHG reported under this subpart for the fab. You must certify that the fluorinated GHG selected for comparison corresponds to the largest quantity, on a mass basis, of fluorinated GHG consumed at the fab during the reporting year for which you are required to apportion following the procedures specified in § 98.93(a), (b), or (i). You may compare the actual gas consumed to the modeled gas consumed for two fluorinated GHGs and demonstrate conformance according to paragraph (c)(2)(iii) of this section on an aggregate use basis for both fluorinated GHGs if one of the fluorinated GHGs selected for comparison corresponds to the largest quantity, on a mass basis, of fluorinated GHGs used at each fab that requires apportionment during the reporting year.

(iii) You must demonstrate that the comparison performed for the largest quantity of gas(es), on a mass basis, consumed in the fab in paragraph (c)(2)(ii) of this section, does not result in a difference between the actual and modeled gas consumption that exceeds 20 percent relative to actual gas consumption, reported to two significant figures using standard rounding conventions.

(iv) If you are required to apportion gas consumption and you use the procedures in § 98.93(i) to calculate annual emissions from a fab, you must verify your apportioning factors using the procedures in paragraphs (c)(2)(ii) and (iii) of this section such that the time period specified in paragraph (c)(2)(i) of this section and the last day you perform the sampling events specified under § 98.93(i)(3) occur in the same accounting month.

(v) If your facility has multiple fabs with a single centralized fluorinated-GHG supply system, you must verify that your apportioning model can apportion fluorinated GHG consumption among the fabs by adhering to the procedures in paragraphs (c)(2)(ii) through (c)(2)(iv) of this section.

(3) As an alternative to developing apportioning factors for fluorinated GHG and N_2O consumption using a fab-specific engineering model, you may

develop apportioning factors through the use of direct measurement using gas flow meters and weigh scales to measure process sub-type, process type, stack system, or fab-specific input gas consumption. You may use a combination of apportioning factors developed using a fab-specific engineering model and apportioning factors developed through the use of direct measurement, provided this is documented in your site GHG Monitoring Plan as required under 98.3(g)(5).

* * * * *

(f) If your fab employs abatement systems and you elect to reflect emission reductions due to these systems, or if your fab employs abatement systems designed for fluorinated GHG abatement and you elect to calculate fluorinated GHG emissions using the stack test method under 98.93(i), you must comply with the requirements of paragraphs (f)(1) through (f)(3) of this section. If you use an average of properly measured destruction or removal efficiencies for a gas and process sub-type or process type combination, as applicable, in your emission calculations under § 98.93(a), (b), and/or (i), you must also adhere to procedures in paragraph (f)(4) of this section.

(1) You must certify and document that the abatement systems are properly installed, operated, and maintained according to the site maintenance plan for abatement systems that is developed and maintained in your records as specified in § 98.97(d)(9).

(2) You must calculate and document the uptime of abatement systems using Equation I–15 or I–23 of this subpart, as applicable.

(3) If you use default destruction and removal efficiency values in your emissions calculations under § 98.93(a), (b), and/or (i), you must certify and document that the abatement systems at your facility for which you use default destruction or removal efficiency values are specifically designed for fluorinated GHG or N_2O abatement, as applicable. If you elect to calculate fluorinated GHG emissions using the stack test method under § 98.93(i), you must also certify that you have included and accounted for all abatement systems designed for fluorinated GHG abatement and any respective downtime in your emissions calculations under § 98.93(i)(3).

(4) If you do not use the default destruction or removal efficiency values in Table I–16 of this subpart to calculate and report controlled emissions, including situations in which your fab employs abatement systems not specifically designed for fluorinated GHG or N_2O abatement and you elect to reflect emission reduction due to these systems, you must use an average of properly measured destruction or removal efficiencies for each gas and process sub-type or process type combination, as applicable, determined in accordance with procedures in paragraphs (f)(4)(i) through (vi) of this section. You must not use a default value from Table I–16 of this subpart for any abatement system not specifically designed for fluorinated GHG and N_2O abatement, or for any gas and process type combination for which you have measured the destruction or removal efficiency according to the requirements of paragraphs (f)(4)(i) through (vi) of this section.

(i) A properly measured destruction or removal efficiency value must be determined in accordance with EPA 430–R–10–003 (incorporated by reference, see § 98.7), or according to an alternative method approved by the Administrator (or authorized representative) as specified in paragraph (k) of this section. If you are measuring destruction or removal efficiency according to EPA 430–R–10–003 (incorporated by reference, see § 98.7), you may follow the alternative procedures specified in Appendix A to this subpart.

(ii) You must select and properly measure the destruction or removal efficiency for a random sample of abatement systems to include in a random sampling abatement system testing program in accordance with procedures in paragraphs (f)(4)(ii)(A) and (B) of this section.

(A) For the first 2 years for which your fab is required to report emissions of fluorinated GHG and N_2O, for each abatement system gas and process sub-type or process type combination, as applicable, a random sample of a minimum of 10 percent of installed abatement systems must be tested annually for a total of a minimum of 20 percent, or a minimum of 20 percent may be tested in the first year. For every 3-year period following the initial 2-year period, a random sample of at least 15 percent of installed abatement systems must be tested for each gas and process sub-type or process type combination; you may test 15-percent in the first year of the 3-year period, but you must test at least 5 percent each year until 15 percent are tested. For each 3-year period, you must determine the number of abatement systems to be tested based on the average number of abatement systems in service over the 3-year period. If the required percent of the total number of abatement systems to be tested for each gas and process sub-type or process type combination does not equate to a whole number, the number of systems to be tested must be determined by rounding up to the nearest integer. Except as provided in paragraph (f)(4)(v) of this section, you may not retest an abatement system for any gas and process sub-type or process type combination, as applicable, until all of the abatement systems for that gas and process sub-type or process type combination have been tested.

(B) If testing of a randomly selected abatement system would be disruptive to production, you may replace that system with another randomly selected system for testing and return the system to the sampling pool for subsequent testing. Any one abatement system must not be replaced by another randomly selected system for more than three consecutive selections. When you have to replace a system in one year, you may select that specific system to be tested in one of the next two sampling years so that you may plan testing of that abatement system to avoid disrupting production.

(iii) If you elect to take credit for abatement system destruction or removal efficiency before completing testing on 20 percent of the abatement systems for that gas and process sub-type or process type combination, as applicable, you must use default destruction or removal efficiencies for a gas and process type combination. You must not use a default value from Table I–16 of this subpart for any abatement system not specifically designed for fluorinated GHG and N_2O abatement, and must not take credit for abatement system destruction or removal efficiency before completing testing on 20 percent of the abatement systems for that gas and process sub-type or process type combination, as applicable. Following testing on 20 percent of abatement systems for that gas and process sub-type or process type combination, you must calculate the average destruction or removal efficiency as the arithmetic mean of all test results for that gas and process sub-type or process type combination, until you have tested at least 30 percent of all abatement systems for each gas and process sub-type or process type combination. After testing at least 30 percent of all systems for a gas and process sub-type or process type combination, you must use the arithmetic mean of the most recent 30 percent of systems tested as the average destruction or removal efficiency. You may include results of testing conducted on or after January 1, 2011 for use in determining the site-specific destruction or removal efficiency for a given gas and

process sub-type or process type combination if the testing was conducted in accordance with the requirements of paragraph (f)(4)(i) of this section.

(iv) If a measured destruction or removal efficiency is below the manufacturer-claimed fluorinated GHG or N_2O destruction or removal efficiency for any abatement system specifically designed for fluorinated GHG or N_2O abatement and the abatement system is installed, operated, and maintained in accordance with the site maintenance plan for abatement systems that is developed and maintained in your records as specified in § 98.97(d)(9), the measured destruction or removal efficiency must be included in the calculation of the destruction or removal efficiency value for that gas and process sub-type or process type.

(v) If a measured destruction or removal efficiency is below the manufacturer-claimed fluorinated GHG or N_2O destruction or removal efficiency for any abatement system specifically designed for fluorinated GHG or N_2O abatement and the abatement system is not installed, operated, or maintained in accordance with the site maintenance plan for abatement systems that is developed and maintained in your records as specified in § 98.97(d)(9), you must implement corrective action and perform a retest to replace the measured value within the reporting year. In lieu of retesting within the reporting year, you may use the measured value in calculating the average destruction or removal efficiency for the reporting year, implement corrective action, and then include the same system in the next abatement system testing period in addition to the testing of randomly selected systems for that next testing period. Regardless of whether you use the lower measured destruction or removal efficiency and when you perform the retest of the abatement system, you must count the time that the abatement system is not operated and maintained according to the site maintenance plan for abatement systems as not being in operational mode for purposes of calculating abatement system uptime.

(vi) If your fab uses redundant abatement systems, you may account for the total abatement system uptime (that is, the time that at least one abatement system is in operational mode) calculated for a specific exhaust stream during the reporting year.

(g) * * *

(3) Follow the QA/QC procedures in accordance with those in EPA 430–R–10–003 (incorporated by reference, see § 98.7), or the applicable QA/QC procedures specified in an alternative method approved by the Administrator (or authorized representative) according to paragraph (k) of this section, when calculating abatement systems destruction or removal efficiencies. If you are measuring destruction or removal efficiency according to EPA 430–R–10–003 (incorporated by reference, see § 98.7), and you elect to follow the alternative procedures specified in Appendix A to this subpart according to paragraph (f)(4)(i) of this section, you must follow any additional QA/QC procedures specified in Appendix A to this subpart.

(4) As part of normal operations for each fab, the inventory of gas stored in containers at the beginning of the reporting year must be the same as the inventory of gas stored in containers at the end of the previous reporting year. You must maintain records documenting the year end and year beginning inventories under § 98.97(a).

(h) You must adhere to the QA/QC procedures of this paragraph (h) when calculating annual gas consumption for each fluorinated GHG and N_2O used at each fab and emissions from the use of each fluorinated heat transfer fluid on a fab basis.

* * * * *

(3) Ensure that the inventory at the beginning of one reporting year is identical to the inventory at the end of the previous reporting year. You must maintain records documenting the year end and year beginning inventories under § 98.97(a) and (r).

* * * * *

(i) All flow meters, weigh scales, pressure gauges, and thermometers used to measure quantities that are monitored under this section or used in calculations under § 98.93 must meet the calibration and accuracy requirements specified in § 98.3(i).

(j) *Stack test methodology*. For each fab for which you calculate annual emissions for any fluorinated GHG emitted from your facility using the stack test method according to the procedure specified in § 98.93(i)(3), you must adhere to the requirements in paragraphs (j)(1) through (8) of this section. You may request approval to use an alternative stack test method and procedure according to paragraph (k) of this section.

(1) *Stack system testing*. Conduct an emissions test for each applicable stack system according to the procedures in paragraphs (j)(1)(i) through (iv) of this section.

(i) You must conduct an emission test during which the fab is operating at a representative operating level, as defined in § 98.98, and with the abatement systems connected to the stack system being tested operating with at least 90 percent uptime, averaged over all abatement systems, during the 8-hour (or longer) period for each stack system, or at no less than 90 percent of the abatement system uptime rate measured over the previous reporting year, averaged over all abatement systems.

(ii) You must measure for the expected and possible by-products identified in Table I–17 of this subpart and those fluorinated GHGs used as input fluorinated GHG in process tools vented to the stack system, except for any intermittent low-use fluorinated GHG as defined in § 98.98. You must calculate annual emissions of intermittent low-use fluorinated GHGs by adhering to the procedures in § 98.93(i)(4)(i).

(iii) If a fluorinated GHG being consumed in the reporting year was not being consumed during the stack testing and does not meet the definition of intermittent low-use fluorinated GHG in § 98.98, then you must test the stack systems associated with the use of that fluorinated GHG at a time when that gas is in use at a magnitude that would allow you to determine an emission factor for that gas. If a fluorinated GHG consumed in the reporting year was not being consumed during the stack testing and is no longer in use by your fab (e.g., use of the gas has become obsolete or has been discontinued), then you must calculate annual emissions for that fluorinated GHG according to the procedure specified in § 98.93(i)(4).

(iv) Although all applicable stack systems are not required to be tested simultaneously, you must certify that no significant changes in stack flow configuration occur between tests conducted for any particular fab in a reporting year. You must certify that no more than 10 percent of the total number of fluorinated GHG emitting process tools are connected or disconnected from a stack system during testing. You must also certify that no process tools that were in operation at the start of the test period have been moved to a different stack system during the test period (i.e., during or in between testing of individual stack systems) and that no point-of-use abatement systems have been permanently removed from service during the test period. You must document any changes in stack flow configuration in the emissions test data and report required to be kept as records under § 98.97(i)(4).

(2) *Test methods and procedures*. You must adhere to the applicable test

methods and procedures specified in Table I–9 to this subpart, or adhere to an alternative method approved by the Administrator (or authorized representative) according to paragraph (k) of this section. If you select Method 320 of 40 CFR part 63, Appendix A to measure the concentration of each fluorinated GHG in the stack system, you must complete a method validation according to Section 13 of Method 320 of 40 CFR part 63, Appendix A for each FTIR system (hardware and software) and each tester (testing company). Method 320 validation is necessary when any change occurs in instrumentation, tester (i.e., testing company), or stack condition (e.g., acid gas vs. base). Measurement of new compounds require validation for those compounds according to Section 13 of Method 320 of 40 CFR part 63, Appendix A. The field detection limits achieved under your test methods and procedures must fall at or below the maximum field detection limits specified in Table I–10 to this subpart.

(3) *Fab-specific fluorinated GHG consumption measurements.* You must determine the amount of each fluorinated GHG consumed by each fab during the sampling period for all process tools connected to the stack systems tested under § 98.93(i)(3), according to the procedures in paragraphs (j)(3)(i) and (ii) of this section. This determination must include apportioning gas consumption between stack systems that are being tested and those that are not tested under § 98.93(i)(2).

(i) Measure fluorinated GHG consumption using gas flow meters, scales, or pressure measurements. Measure the mass or pressure, as applicable, at the beginning and end of the sampling period and when containers are changed out. If you elect to measure gas consumption using pressure (i.e., because the gas is stored in a location above its critical temperature) you must estimate consumption as specified in paragraphs (j)(3)(i)(A) and (B) of this section.

(A) For each fluorinated GHG, you must either measure the temperature of the fluorinated GHG container(s) when the sampling periods begin and end and when containers are changed out, or measure the temperature of the fluorinated GHG container(s) every hour for the duration of the sampling period. Temperature measurements of the immediate vicinity of the containers (e.g., in the same room, near the containers) shall be considered temperature measurements of the containers.

(B) Convert the sampling period-beginning, sampling period-ending, and container change-out pressures to masses using Equation I–25 of this subpart, with the appropriate Z value selected based upon the properties of the gas (e.g., the Z value yielded by the Redlich, Kwong, Soave equation of state with appropriate values for that gas). Apply the temperatures measured at or nearest to the beginning and end of the sampling period and to the time(s) when containers are changed out, as applicable. For each gas, the consumption during the sampling period is the difference between the masses of the containers of that gas at the beginning and at the end of the sampling period, summed across containers, including containers that are changed out.

(ii) For each fluorinated GHG gas for which consumption is too low to be accurately measured during the sampling period using gas flow meters, scales, or pressure measurements as specified in paragraph (j)(3)(i) of this section, you must follow at least one of the procedures listed in paragraph (j)(3)(ii)(A) through (C) of this section to obtain a consumption measurement.

(A) Draw the gas from a single gas container if it is normally supplied from multiple containers connected by a shared manifold.

(B) Calculate consumption from pro-rated long-term consumption data (for example, calculate and use hourly consumption rates from monthly consumption data).

(C) Increase the duration of the sampling period for consumption measurement beyond the minimum duration specified in Table I–9 of this subpart.

(4) *Emission test results.* The results of an emission test must include the analysis of samples, number of test runs, the average emission factor for each fluorinated GHG measured, the analytical method used, calculation of emissions, the fluorinated GHGs consumed during the sampling period, an identification of the stack systems tested, and the fluorinated GHGs that were included in the test. The emissions test report must contain all information and data used to derive the fab-specific emission factor.

(5) *Emissions testing frequency.* You must conduct emissions testing to develop fab-specific emission factors on a frequency according to the procedures in paragraph (j)(5)(i) or (ii) of this section.

(i) *Annual testing.* You must conduct an annual emissions test for each stack system for which emissions testing is required under § 98.93(i)(3), unless you meet the criteria in paragraph (j)(5)(ii) of this section to skip annual testing. Each set of emissions testing for a stack system must be separated by a period of at least 2 months.

(ii) *Criteria to test less frequently.* After the first 3 years of annual testing, you may calculate the relative standard deviation of the emission factors for each fluorinated GHG included in the test and use that analysis to determine the frequency of any future testing. As an alternative, you may conduct all three tests in less than 3 calendar years for purposes of this paragraph (j)(5)(ii), but this does not relieve you of the obligation to conduct subsequent annual testing if you do not meet the criteria to test less frequently. If the criteria specified in paragraphs (j)(5)(ii)(A) and (B) of this section are met, you may use the arithmetic average of the three emission factors for each fluorinated GHG and fluorinated GHG by-product for the current year and the next 4 years with no further testing unless your fab operations are changed in way that triggers the re-test criteria in paragraph (j)(8) of this section. In the fifth year following the last stack test included in the previous average, you must test each of the stack systems for which testing is required and repeat the relative standard deviation analysis using the results of the most recent three tests (i.e., the new test and the two previous tests conducted prior to the 4 year period). If the criteria specified in paragraphs (j)(5)(ii)(A) and (B) of this section are not met, you must use the emission factors developed from the most recent testing and continue annual testing. You may conduct more than one test in the same year, but each set of emissions testing for a stack system must be separated by a period of at least 2 months. You may repeat the relative standard deviation analysis using the most recent three tests, including those tests conducted prior to the 4 year period, to determine if you are exempt from testing for the next 4 years.

(A) The relative standard deviation of the total CO_2e emission factors calculated from each of the three tests (expressed as the total CO_2e fluorinated GHG emissions of the fab divided by the total CO_2e fluorinated GHG use of the fab) is less than or equal to 15 percent.

(B) The relative standard deviation for all single fluorinated GHGs that individually accounted for 5 percent or more of CO_2e emissions were less than 20 percent.

(C) For those fluorinated GHG that do not have GWP values listed in Table A–1 to subpart A of this part, you must use a GWP value of 2,000 in calculating

CO_2e in paragraphs (j)(5)(ii)(A) and (B) of this section.

(6) *Subsequent measurements.* You must make an annual determination of each stack system's exemption status under § 98.93(i)(2) by March 31 each year. If a stack system that was previously not required to be tested per § 98.93(i)(2), no longer meets the criteria in § 98.93(i)(2), you must conduct the emissions testing for the stack system during the current reporting and develop the fab-specific emission factor from the emissions testing.

(7) *Previous measurements.* You may include the results of emissions testing conducted on or after January 1, 2011 for use in the relative standard deviation calculation in paragraph (j)(5)(ii) of this section if the previous results were determined using a method meeting the requirements in paragraph (j)(2) of this section. You may request approval to use results of emissions testing conducted between January 1, 2011 and January 1, 2014 using a method that deviated from the requirements in paragraph (j)(2) of this section by adhering to the requirements in paragraphs (j)(7)(i) through (j)(7)(iv) of this section.

(i) Notify the Administrator (or an authorized representative) of your intention to use the results of the previous emissions testing. You must include in the notification the data and results you intend to use for meeting either reporting or recordkeeping requirements, a description of the method, and any deviations from the requirements in paragraph (j)(2) of this section. Your description must include an explanation of how any deviations do not affect the quality of the data collected.

(ii) The Administrator will review the information submitted under paragraph (j)(7)(i) and determine whether the results of the previous emissions testing are adequate and issue an approval or disapproval of the use of the results within 120 days of the date on which you submit the notification specified in paragraph (j)(7)(i) of this section.

(iii) If the Administrator finds reasonable grounds to disapprove the results of the previous emissions testing, the Administrator may request that you provide additional information to support the use of the results of the previous emissions testing. Failure to respond to any request made by the Administrator does not affect the 120 day deadline specified in paragraph (j)(7)(ii) of this section.

(iv) Neither the approval process nor the failure to obtain approval for the use of results from previous emissions testing shall abrogate your responsibility to comply with the requirements of this subpart.

(8) *Scenarios that require a stack system to be re-tested.* By March 31 of each reporting year, you must evaluate and determine whether any changes to your fab operations meet the criteria specified in paragraphs (j)(8)(i) through (vi) of this section. If any of the scenarios specified in paragraph (j)(8)(i) through (vi) of this section occur, you must perform a re-test of any applicable stack system, irrespective of whether you have met the criteria for less frequent testing in paragraph (j)(5)(ii) of this section, before the end of the year in which the evaluation was completed. You must adhere to the methods and procedures specified in § 98.93(i)(3) for performing a stack system emissions test and calculating emissions. If you meet the criteria for less frequent testing in paragraph (j)(5)(ii), and you are required to perform a re-test as specified in paragraph (j)(8)(i) through (vi) of this section, the requirement to perform a re-test does not extend the date of the next scheduled test that was established prior to meeting the requirement to perform a re-test. If the criteria specified in paragraph (j)(5)(ii) of this section are not met using the results from the re-test and the two most recent stack tests, you must use the emission factors developed from the most recent testing to calculate emissions and resume annual testing. You may resume testing less frequently according to your original schedule if the criteria specified in paragraph (j)(5)(ii) of this section are met using the most recent three tests.

(i) Annual consumption of a fluorinated GHG used during the most recent emissions test (expressed in CO_2e) changes by more than 10 percent of the total annual fluorinated GHG consumption, relative to gas consumption in CO_2e for that gas during the year of the most recent emissions test (for example, if the use of a single gas goes from 25 percent of CO_2e to greater than 35 percent of CO_2e, this change would trigger a re-test). For those fluorinated GHGs that do not have GWP values listed in Table A–1 to subpart A of this part, you must use a GWP value of 2,000 in calculating CO_2e for purposes of this paragraph.

(ii) A change in the consumption of an intermittent low-use fluorinated GHG (as defined in § 98.98) that was not used during the emissions test and not reflected in the fab-specific emission factor, such that it no longer meets the definition of an intermittent low-use fluorinated GHG.

(iii) A decrease by more than 10 percent in the fraction of tools with abatement systems, compared to the number during the most recent emissions test.

(iv) A change in the wafer size manufactured by the fab since the most recent emissions test.

(v) A stack system that formerly met the criteria specified under § 98.93(i)(2) for not being subject to testing no longer meets those criteria.

(vi) If a fluorinated GHG being consumed in the reporting year was not being consumed during the stack test and does not meet the definition of intermittent, low-use fluorinated GHG in § 98.98, then you must test the stack systems associated with the use of that fluorinated GHG at a time when that gas is in use as required in paragraph (j)(1)(iii) of this section.

(k) You may request approval to use an alternative stack test method and procedure or to use an alternative method to determine abatement system destruction or removal efficiency by adhering to the requirements in paragraphs (k)(1) through (6) of this section. An alternative method is any method of sampling and analyzing for a fluorinated GHG or N_2O, or the determination of parameters other than concentration, for example, flow measurements, that is not a method specified in this subpart and that has been demonstrated to the Administrator's satisfaction, using Method 301 in appendix A of part 63, to produce results adequate for the Administrator's determination that it may be used in place of a method specified elsewhere in this subpart.

(1) You may use an alternative method from that specified in this subpart provided that you:

(i) Notify the Administrator (or an authorized representative) of your intention to use an alternative method. You must include in the notification a site-specific test plan describing the alternative method and procedures (the alternative test plan), the range of test conditions over which the validation is intended to be applicable, and an alternative means of calculating the fab-level fluorinated GHG or N_2O emissions or determining the abatement system destruction or removal efficiency if the Administrator denies the use of the results of the alternative method under paragraph (k)(2) or (3) of this section.

(ii) Use Method 301 in appendix A of part 63 of this chapter to validate the alternative method. This may include the use of only portions of specific procedures of Method 301 if use of such procedures are sufficient to validate the alternative method; and

(iii) Submit the results of the Method 301 validation process along with the notification of intention and the

rationale for not using the specified method.

(2) The Administrator will determine whether the validation of the proposed alternative method is adequate and issue an approval or disapproval of the alternative test plan within 120 days of the date on which you submit the notification and alternative test plan specified in paragraph (k)(1) of this section. If the Administrator approves the alternative test plan, you are authorized to use the alternative method(s) in place of the methods described in paragraph (f)(4)(i) of this section for measuring destruction or removal efficiency or paragraph (j) of this section for conducting the stack test, as applicable, taking into account the Administrator's comments on the alternative test plan. Notwithstanding the requirement in the preceding sentence, you may at any time prior to the Administrator's approval or disapproval proceed to conduct the stack test using the methods specified in paragraph (j) of this section or the destruction or removal efficiency determination specified in (f)(4)(i) of this section if you use a method specified in this subpart instead of the requested alternative. If an alternative test plan is not approved and you still want to use an alternative method, you must recommence the process to have an alternative test method approved starting with the notification of intent to use an alternative test method specified in paragraph (k)(1)(i) of this section.

(3) You must report the results of stack testing or destruction or removal efficiency determination using the alternative method and procedure specified in the approved alternative test plan. You must include in your report for an alternative stack test method and for an alternative abatement system destruction or removal efficiency determination the information specified in paragraph (j)(4) of this section, including all methods, calculations and data used to determine the fluorinated GHG emission factor or the abatement system destruction or removal efficiency. The Administrator will review the results of the test using the alternative methods and procedure and then approve or deny the use of the results of the alternative test method and procedure no later than 120 days after they are submitted to EPA.

(4) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative method for the purposes of determining fluorinated GHG emissions or destruction or removal efficiency of an abatement system, the Administrator may require the use of another method specified in this subpart.

(5) Once the Administrator has approved the use of the alternative method for the purposes of determining fluorinated GHG emissions for specific fluorinated GHGs and types of stack systems or abatement system destruction or removal efficiency, that method may be used at any other facility for the same fluorinated GHGs and types of stack systems, or fluorinated GHGs and abatement systems, if the approved conditions apply to that facility. In granting approval, the Administrator may limit the range of test conditions and emission characteristics for which that approval is granted and under which the alternative method may be used without seeking approval under paragraphs (k)(1) through (4) of this section. The Administrator will specify those limitations, if any, in the approval of the alternative method.

(6) Neither the validation and approval process nor the failure to validate or obtain approval of an alternative method shall abrogate your responsibility to comply with the requirements of this subpart.

■ 8. Section 98.96 is amended by:
■ a. Revising paragraphs (a) and (b);
■ b. Revising paragraphs (c) introductory text and (c)(1) through (3);
■ c. Adding paragraph (c)(5);
■ d. Removing and reserving paragraphs (f) through (l);
■ e. Revising paragraph (m) introductory text;
■ f. Redesignating paragraphs (m)(i) through (m)(iv) as paragraphs (m)(1) through (m)(4), and revising newly redesignated paragraphs (m)(1), (3), and (4);
■ g. Adding paragraph (m)(5);
■ h. Removing and reserving paragraphs (n) and (o);
■ i. Revising paragraphs (p) through (s);
■ j. Removing and reserving paragraphs (t) through (v); and
■ k. Adding paragraphs (w), (x), and (y).

The revisions and additions read as follows:

§ 98.96 Data reporting requirements.

* * * * *

(a) Annual manufacturing capacity of each fab at your facility used to determine the annual manufacturing capacity of your facility in Equation I–5 of this subpart.

(b) For facilities that manufacture semiconductors, the diameter of wafers manufactured at each fab at your facility (mm).

(c) Annual emissions, on a fab basis as described in paragraph (c)(1) through (5) of this section.

(1) When you use the procedures specified in § 98.93(a) of this subpart, each fluorinated GHG emitted from each process type for which your fab is required to calculate emissions as calculated in Equations I–6 and I–7 of this subpart.

(2) Each fluorinated GHG emitted from each process type or process sub-type as calculated in Equations I–8 and I–9 of this subpart, as applicable.

(3) N_2O emitted from all chemical vapor deposition processes and N_2O emitted from the aggregate of other N_2O-using manufacturing processes as calculated in Equation I–10 of this subpart.

* * * * *

(5) When you use the procedures specified in § 98.93(i) of this subpart, annual emissions of each fluorinated GHG, on a fab basis.

* * * * *

(m) For the fab-specific apportioning model used to apportion fluorinated GHG and N_2O consumption under § 98.94(c), the following information to determine it is verified in accordance with procedures in § 98.94(c)(1) and (2):

(1) Identification of the quantifiable metric used in your fab-specific engineering model to apportion gas consumption for each fab, and/or an indication if direct measurements were used in addition to, or instead of, a quantifiable metric.

* * * * *

(3) Certification that the gas(es) you selected under § 98.94(c)(2)(ii) for each fab corresponds to the largest quantity(ies) consumed, on a mass basis, of fluorinated GHG used at your fab during the reporting year for which you are required to apportion.

(4) The result of the calculation comparing the actual and modeled gas consumption under § 98.94(c)(2)(iii) and (iv), as applicable.

(5) If you are required to apportion fluorinated GHG consumption between fabs as required by § 98.94(c)(2)(v), certification that the gas(es) you selected under § 98.94(c)(2)(ii) corresponds to the largest quantity(ies) consumed on a mass basis, of fluorinated GHG used at your facility during the reporting year for which you are required to apportion.

* * * * *

(p) Inventory and description of all abatement systems through which fluorinated GHGs or N_2O flow at your facility and for which you are claiming destruction or removal efficiency, including:

(1) The number of abatement systems controlling emissions for each process sub-type, or process type, as applicable,

for each gas used in the process sub-type or process type.

(2) The basis of the destruction or removal efficiency being used (default or site specific measurement according to § 98.94(f)(4)(i)) for each process sub-type or process type and for each gas.

(q) For all abatement systems through which fluorinated GHGs or N_2O flow at your facility, for which you are reporting controlled emissions, the following:

(1) Certification that all abatement systems at the facility have been installed, maintained, and operated in accordance with the site maintenance plan for abatement systems that is developed and maintained in your records as specified in § 98.97(d)(9).

(2) If you use default destruction or removal efficiency values in your emissions calculations under § 98.93(a), (b), or (i), certification that the site maintenance plan for abatement systems for which emissions are being reported contains manufacturer's recommendations and specifications for installation, operation, and maintenance for each abatement system.

(3) If you use default destruction or removal efficiency values in your emissions calculations under § 98.93(a), (b), and/or (i), certification that the abatement systems for which emissions are being reported were specifically designed for fluorinated GHG or N_2O abatement, as applicable. You must support this certification by providing abatement system supplier documentation stating that the system was designed for fluorinated GHG or N_2O abatement, as applicable.

(4) For all stack systems for which you calculate fluorinated GHG emissions according to the procedures specified in § 98.93(i)(3), certification that you have included and accounted for all abatement systems and any respective downtime in your emissions calculations under § 98.93(i)(3).

(r) You must report an effective fab-wide destruction or removal efficiency value for each fab at your facility calculated using Equation I–26, I–27, and I–28 of this subpart, as appropriate.

$$DRE_{FAB} = 1 - \left[\frac{\sum_i FGHG_i * GWP_i + \sum_j N_2O_j * GWP_{N2O}}{UAFGHG + SFGHG + \sum_j C_{N2O,j} * (1 - U_{N2O,j}) * GWP_{N2O}} \right] \quad \text{(Eq. I-26)}$$

Where:

DRE_{FAB} = Fab-wide effective destruction or removal efficiency value, expressed as a decimal fraction.

$FGHG_i$ = Total emissions of each fluorinated GHG i emitted from electronics manufacturing processes in the fab, calculated according to the procedures in § 98.93.

N_2O_j = Emissions of N_2O from each N_2O-emitting electronics manufacturing process j in the fab, expressed in metric ton CO_2 equivalents, calculated according to the procedures in § 98.93.

UAFGHG = Total unabated emissions of fluorinated GHG emitted from electronics manufacturing processes in the fab, expressed in metric ton CO_2 equivalents as calculated in Equation I–27 of this subpart.

SFGHG = Total unabated emissions of fluorinated GHG emitted from electronics manufacturing processes in the fab, expressed in metric ton CO_2 equivalents, as calculated in Equation I–28 of this subpart.

$C_{N_2O,j}$ = Consumption of N_2O in each N_2O emitting process j, expressed in metric ton CO_2 equivalents.

$1-U_{N_2O,j}$ = N_2O emission factor for each N_2O emitting process j from Table I–8 of this subpart.

GWP_i = GWP of emitted fluorinated GHG i from Table A–1 of this part. For those fluorinated GHGs for which Table A–1 to subpart A of this part does not define a GWP value, use a GWP value of 2,000 for purposes of this equation.

GWP_{N_2O} = GWP of N_2O from Table A–1 of this part.

i = Fluorinated GHG.

j = Process Type.

(1) Use Equation I–27 of this subpart to calculate total unabated emissions, in metric tons CO_2e, of all fluorinated GHG emitted from electronics manufacturing processes whose emissions of fluorinated GHG you calculated according to the default utilization and by-product formation rate procedures in § 98.93(a) or § 98.93(i)(4). For each fluorinated GHG i in process j, use the same consumption (C_{ij}), emission factors ($1 - U_{ij}$), and by-product formation rates (B_{ijk}) to calculate unabated emissions as you used to calculate emissions in § 98.93(a) or § 98.93(i)(4).

$$UAFGHG = \sum_i \sum_j C_{ij} * (1 - U_{ij}) * GWP_i + \sum_i \sum_j C_{ij} * B_{ijk} * GWP_k \quad \text{(Eq. I-27)}$$

Where:

UAFGHG = Total unabated emissions of fluorinated GHG emitted from electronics manufacturing processes in the fab, expressed in metric ton CO_2e for which you calculated total emission according to the procedures in § 98.93(a) or § 98.93(i)(4).

C_{ij} = Total consumption of fluorinated GHG i, apportioned to process j, expressed in metric ton CO_2e, which you used to calculate total emissions according to the procedures in § 98.93(a) or § 98.93(i)(4).

U_{ij} = Process utilization rate for fluorinated GHG i, process type j, which you used to calculate total emissions according to the procedures in § 98.93(a) or § 98.93(i)(4).

GWP_i = GWP of emitted fluorinated GHG i from Table A–1 of this part. For those fluorinated GHGs for which Table A–1 to subpart A of this part does not define a GWP value, use a GWP value of 2,000 for purposes of this equation.

GWP_k = GWP of emitted fluorinated GHG by-product k, from Table A–1 of this part. For those fluorinated GHGs for which Table A–1 to subpart A of this part does not define a GWP value, use a GWP value of 2,000 for purposes of this equation.

B_{ijk} = By-product formation rate of fluorinated GHG k created as a by-product per amount of fluorinated GHG input gas i (kg) consumed by process type j (kg).

i = Fluorinated GHG.

j = Process Type.

k = Fluorinated GHG by-product.

(2) Use Equation I–28 to calculate total unabated emissions, in metric ton CO_2e, of all fluorinated GHG emitted from electronics manufacturing processes whose emissions of fluorinated GHG you calculated according to the stack testing procedures in § 98.93(i)(3). For each set of processes, use the same input gas

consumption (C_{if}), input gas emission factors (EF_{if}), by-product gas emission factors (EF_{kf}), fractions of tools abated (a_{if} and a_f), and destruction efficiencies (d_{if} and d_{kf}) to calculate unabated emissions as you used to calculate emissions.

$$SFGHG = \sum_i \left[\frac{EF_{if}}{\left(1-\left(a_{if} * d_{if}\right)\right)} * C_{if} * GWP_i \right] + \sum_k \left[\frac{EF_{kf}}{\left(1-\left(a_f * d_{kf}\right)\right)} * \sum_i C_{if} * GWP_k \right] \quad \text{Eq. I-28)}$$

Where:

SFGHG = Total unabated emissions of fluorinated GHG emitted from electronics manufacturing processes in the fab, expressed in metric ton CO_2e for which you calculated total emission according to the procedures in § 98.93(i)(3).

EF_{if} = Emission factor for fluorinated GHG input gas i, emitted from fab f, as calculated in Equation I–19 of this subpart (kg emitted/kg input gas consumed).

a_{if} = Fraction of fluorinated GHG input gas i used in fab f in tools with abatement systems (expressed as a decimal fraction).

d_{if} = Fraction of fluorinated GHG i destroyed or removed in abatement systems connected to process tools in fab f, which you used to calculate total emissions according to the procedures in § 98.93(i)(3) (expressed as a decimal fraction).

C_{if} = Total consumption of fluorinated GHG input gas i, of tools vented to stack systems that are tested, for fab f, for the reporting year, expressed in metric ton CO_2e, which you used to calculate total emissions according to the procedures in § 98.93(i)(3) (expressed as a decimal fraction).

EF_{kf} = Emission factor for fluorinated GHG by-product gas k, emitted from fab f, as calculated in Equation I–20 of this subpart (kg emitted/kg of all input gases consumed in tools vented to stack systems that are tested).

a_f = Fraction of input gases used in fab f in tools with abatement systems (expressed as a decimal fraction).

d_{kf} = Fraction of fluorinated GHG by-product k destroyed or removed in abatement systems connected to process tools in fab f, which you used to calculate total emissions according to the procedures in § 98.93(i)(3) (expressed as a decimal fraction).

GWP_i = GWP of emitted fluorinated GHG i from Table A–1 of this part. For those fluorinated GHGs for which Table A–1 of subpart A to this part does not define a GWP value, use a GWP value of 2,000 for purposes of this equation.

GWP_k = GWP of emitted fluorinated GHG by-product k, from Table A–1 of this part. For those fluorinated GHGs for which Table A–1 to subpart A of this part does not define a GWP value, use a GWP value of 2,000 for purposes of this equation.

i = Fluorinated GHG.

k = Fluorinated GHG by-product.

(s) Where missing data procedures were used to estimate inputs into the fluorinated heat transfer fluid mass balance equation under § 98.95(b), the number of times missing data procedures were followed in the reporting year and the method used to estimate the missing data.

* * * * *

(w) If you elect to calculate fab-level emissions of fluorinated GHG using the stack test methods specified in § 98.93(i), you must report the following in paragraphs (w)(1) and (2) for each stack system, in addition to the relevant data in paragraphs (a) through (v) of this section:

(1) The date of any stack testing conducted during the reporting year, and the identity of the stack system tested.

(2) An inventory of all stack systems from which process fluorinated GHG are emitted. For each stack system, indicate whether the stack system is among those for which stack testing was performed as per § 98.93(i)(3) or not performed as per § 98.93(i)(2).

(x) If the emissions you report under paragraph (c) of this section include emissions from research and development activities, as defined in § 98.6, report the approximate percentage of total GHG emissions, on a metric ton CO_2e basis, that are attributable to research and development activities, using the following ranges: less than 5 percent, 5 percent to less than 10 percent, 10 percent to less than 25 percent, 25 percent to less than 50 percent, 50 percent and higher. For those fluorinated GHG that do not have GWP values listed in Table A–1 of subpart A of this part, you must use a GWP value of 2,000 in calculating CO_2e for purposes of this paragraph.

(y) If your semiconductor manufacturing facility emits more than 40,000 metric ton CO_2e of GHG emissions, based on your most recently submitted annual report (beginning with the 2015 reporting year) as required in paragraph (c) of this section, from the electronics manufacturing processes subject to reporting under this subpart, you must prepare and submit a triennial (every 3 years) technology assessment report to the Administrator (or an authorized representative) that meets the requirements specified in paragraphs (y)(1) through (6) of this section. Any other semiconductor manufacturing facility may voluntarily submit this report to the Administrator.

(1) The first report must be submitted with the annual GHG emissions report that is due no later than March 31, 2017, and subsequent reports must be delivered every 3 years no later than March 31 of the year in which it is due.

(2) The report must include the information described in paragraphs (y)(2)(i) through (v) of this section.

(i) It must describe how the gases and technologies used in semiconductor manufacturing using 200 mm and 300 mm wafers in the United States have changed in the past 3 years and whether any of the identified changes are likely to have affected the emissions characteristics of semiconductor manufacturing processes in such a way that the default utilization and by-product formation rates or default destruction or removal efficiency factors of this subpart may need to be updated.

(ii) It must describe the effect on emissions of the implementation of new process technologies and/or finer line width processes in 200 mm and 300 mm technologies, the introduction of new tool platforms, and the introduction of new processes on previously tested platforms.

(iii) It must describe the status of implementing 450 mm wafer technology and the potential need to create or update default emission factors compared to 300 mm technology.

(iv) It must provide any utilization and by-product formation rates and/or destruction or removal efficiency data that have been collected in the previous 3 years that support the changes in semiconductor manufacturing processes described in the report.

(v) It must describe the use of a new gas, use of an existing gas in a new process type or sub-type, or a fundamental change in process technology.

(3) If, on the basis of the information reported in paragraph (y)(2) of this section, the report indicates that GHG emissions from semiconductor manufacturing may have changed from those represented by the default utilization and by-product formation

rates in Tables I–3 or I–4, or the default destruction or removal efficiency values in Table I–16 of this subpart, the report must lay out a data gathering and analysis plan focused on the areas of potential change. The plan must describe the elements in paragraphs (y)(3)(i) and (ii).

(i) The testing of tools to determine the potential effect on current utilization and by-product formation rates and destruction or removal efficiency values under the new conditions. You must follow the QA/QC procedures in the International SEMATECH #60124825A–ENG (incorporated by reference, see § 98.7) when measuring and calculating process sub-type and process type fluorinated GHG and N_2O utilization and by-product formation rates.

(ii) A planned analysis of the effect on overall facility emissions using a representative gas-use profile for a 200 mm, 300 mm, or 450 mm fab (depending on which technology is under consideration).

(4) Multiple semiconductor manufacturing facilities may submit a single consolidated 3-year report as long as the facility identifying information in § 98.3(c)(1) and the certification statement in § 98.3(c)(9) is provided for each facility for which the consolidated report is submitted.

(5) The Administrator will review the report received and determine whether it is necessary to update the default utilization rates and by-product formation rates in Tables I–3, I–4, I–11, and I–12 of this subpart and default destruction or removal efficiency values in Table I–16 of this subpart based on the following:

(i) Whether the revised default utilization and by-product formation rates and destruction or removal efficiency values will result in a projected shift in emissions of 10 percent or greater.

(ii) Whether new platforms, processes, or facilities that are not captured in current default utilization and by-product formation rates and destruction or removal efficiency values should be included in revised values.

(iii) Whether new data are available that could expand the existing data set to include new gases, tools, or processes not included in the existing data set (i.e. gases, tools, or processes for which no data are currently available).

(6) The Administrator will review the reports within 120 days and will notify you of a determination whether it is necessary to update any default utilization and by-product formation rates and/or destruction or removal efficiency values. If the Administrator determines it is necessary to update default utilization and by-product formation rates and/or destruction or removal efficiency values, you will then have 180 days from the date you receive notice of the determination to execute the data collection and analysis plan described in the report and submit those data to the Administrator.

■ 9. Section 98.97 is amended by:

■ a. Removing and reserving paragraph (b);

■ b. Revising paragraph (c);

■ c. Revising paragraphs (d) introductory text, (d)(1), and (4), and add paragraphs (d)(5) through (9); and

■ d. Adding paragraphs (i) through (s).

The revisions and additions read as follows:

§ 98.97 Records that must be retained.

* * * * *

(c) Documentation for the fab-specific engineering model used to apportion fluorinated GHG and N_2O consumption. This documentation must be part of your site GHG Monitoring Plan as required under § 98.3(g)(5). At a minimum, you must retain the following:

(1) A clear, detailed description of the fab-specific model, including how it was developed; the quantifiable metric used in the model; all sources of information, equations, and formulas, each with clear definitions of terms and variables; all apportioning factors used to apportion fluorinated GHG and N_2O; and a clear record of any changes made to the model while it was used to apportion fluorinated GHG and N_2O consumption across process sub-types, process types, tools with and without abatement systems, stack systems, and/or fabs.

(2) Sample calculations used for developing the gas apportioning factors (f_{ij}) for the two fluorinated GHGs used at your facility in the largest quantities, on a mass basis, during the reporting year.

(3) If you develop apportioning factors through the use of direct measurement according to § 98.94(c)(3), calculations and data used to develop each gas apportioning factor.

(4) Calculations and data used to determine and document that the fab was operating at representative operating levels, as defined in § 98.98, during the apportioning model verification specified in § 98.94(c).

(d) For all abatement systems through which fluorinated GHGs or N_2O flow at your facility, and for which you are reporting controlled emissions, the following in paragraphs (d)(1) to (9) of this section:

(1) Records of the information in paragraphs (d)(1)(i) though (iv) of this section:

(i) Documentation to certify that each abatement system or group of abatement systems is installed, maintained, and operated in accordance with the site maintenance plan for abatement systems that is specified in paragraph (d)(9) of this section.

(ii) Documentation from the abatement system supplier describing the abatement system's designed purpose and emission control capabilities for fluorinated GHG and N_2O for which the systems or group of systems is certified to abate, where available.

(iii) If you use default destruction or removal efficiency values in your emissions calculations under § 98.93(a), (b), and/or (i), certification that the abatement systems for which emissions are being reported were specifically designed for fluorinated GHG and N_2O abatement, as required under § 98.94(f)(3), and certification that the site maintenance plan includes manufacturer's recommendations and specifications for installation, operation, and maintenance for all applicable abatement systems.

(iv) Certification that you have included and accounted for all abatement systems and any respective downtime in your emissions calculations under § 98.93(i)(3), as required under § 98.94(f)(3).

* * * * *

(4) Where properly measured site-specific destruction or removal efficiencies are used to report emissions, the information in paragraphs (d)(4)(i) though (vi) of this section:

(i) Dated certification by the technician who made the measurement that the destruction or removal efficiency is calculated in accordance with methods in EPA 430–R–10–003 (incorporated by reference, see § 98.7) and, if applicable Appendix A of this subpart, or an alternative method approved by the Administrator as specified in § 98.94(k), complete documentation of the results of any initial and subsequent tests, the final report as specified in EPA 430–R–10–003 (incorporated by reference, see § 98.7) and, if applicable, the records and documentation specified in Appendix A of this subpart including the information required in paragraph (b)(7) of Appendix A of this subpart, or a final report as specified in an alternative method approved by the Administrator as specified in § 98.94(k).

(ii) The average destruction or removal efficiency of the abatement

systems operating during the reporting year for each process type and gas combination.

(iii) A description of the calculation used to determine the average destruction or removal efficiency for each process type and gas combination, including all inputs to the calculation.

(iv) The records of destruction or removal efficiency measurements for abatement systems for all tests that have been used to determine the site-specific destruction or removal efficiencies currently being used.

(v) A description of the method used for randomly selecting abatement systems for testing.

(vi) The total number of systems for which destruction or removal efficiency was properly measured for each process type and gas combination for the reporting year.

(5) In addition to the inventory specified in § 98.96(p), the information in paragraphs (d)(5)(i) though (iii) of this section:

(i) The number of abatement systems of each manufacturer, and model numbers, and the manufacturer's claimed fluorinated GHG and N_2O destruction or removal efficiency, if any.

(ii) Records of destruction or removal efficiency measurements over the in-use life of each abatement system.

(iii) A description of the tool, with the process type or sub-type, for which the abatement system treats exhaust.

(6) Records of all inputs and results of calculations made accounting for the uptime of abatement systems used during the reporting year, in accordance with Equations I–15 or I–23 of this subpart, as applicable. The inputs should include an indication of whether each value for destruction or removal efficiency is a default value or a measured site-specific value.

(7) Records of all inputs and results of calculations made to determine the average weighted fraction of each gas destroyed or removed in the abatement systems for each stack system using Equation I–24 of this subpart, if applicable. The inputs should include an indication of whether each value for destruction or removal efficiency is a default value or a measured site-specific value.

(8) Records of all inputs and the results of the calculation of the facility-wide emission destruction or removal efficiency factor calculated according to Equations I–26, I–27, and I–28 of this subpart.

(9) A site maintenance plan for abatement systems, which must be maintained on-site at the facility as part of the facility's GHG Monitoring Plan as described in § 98.3(g)(5), and be developed and implemented according to paragraphs (d)(9)(i) through (iii) of this section.

(i) The site maintenance plan for abatement systems must be based on the abatement system manufacturer's recommendations and specifications for installation, operation, and maintenance if you use default destruction and removal efficiency values in your emissions calculations under § 98.93(a), (b), and/or (i). If the manufacturer's recommendations and specifications for installation, operation, and maintenance are not available, you cannot use default destruction and removal efficiency values in your emissions calculations under § 98.93(a), (b), and/or (i). If you use an average of properly measured destruction or removal efficiencies determined in accordance with the procedures in § 98.94(f)(4)(i) through (vi), the site maintenance plan for abatement systems must be based on the abatement system manufacturer's recommendations and specifications for installation, operation, and maintenance, where available. If you deviate from the manufacturer's recommendations and specifications, you must include documentation that demonstrates how the deviations do not negatively affect the performance or destruction or removal efficiency of the abatement systems.

(ii) The site maintenance plan for abatement systems must include a defined preventative maintenance process and checklist.

(iii) The site maintenance plan for abatement systems must include a corrective action process that you must follow whenever an abatement system is found to be not operating properly.

* * * * *

(i) Retain the following records for each fab for which you elect to calculate fab-level emissions of fluorinated GHG using the procedures specified in § 98.93(i)(3) or (4).

(1) Document all stack systems with emissions of fluorinated GHG that are less than 10,000 metric tons of CO_2e per year and all stack systems with emissions of 10,000 metric tons CO_2e per year or more. Include the data and calculation used to develop the preliminary estimate of emissions for each stack system.

(2) For each stack system, identify the method used to calculate annual emissions; either § 98.93(i)(3) or (4).

(3) The identity and total annual consumption of each gas identified as an intermittent low use fluorinated GHG as specified in § 98.93(i)(4)(i) and defined in § 98.98.

(4) The emissions test data and reports (see § 98.94(j)(4)) and the calculations used to determine the fab-specific emission factor, including the actual fab-specific emission factor, the average hourly emission rate of each fluorinated GHG from the stack system during the test and the stack system activity rate during the test. The report must also contain any changes in the stack system configuration during or between tests in a reporting year.

(5) The fab-specific emission factor and the calculations and data used to determine the fab-specific emission factor for each fluorinated GHG and by-product, as calculated using Equations I–19 and I–20 of § 98.93(i)(3).

(6) Calculations and data used to determine annual emissions of each fluorinated GHG for each fab.

(7) Calculations and data used to determine and document that the fab was operating at representative operating levels, as defined in § 98.98, during the stack testing period.

(8) A copy of the certification that no significant changes in stack system flow configuration occurred between tests conducted for any particular fab in a reporting year, as required by § 98.94(j)(1)(iv) and any calculations and data supporting the certification.

(9) The number of tools vented to each stack system in the fab.

(j) If you report the approximate percentage of total GHG emissions from research and development activities under § 98.96(x), documentation for the determination of the percentage of total emissions of each fluorinated GHG and/or N_2O attributable to research and development activities, as defined in § 98.6.

(k) Annual gas consumption for each fluorinated GHG and N_2O as calculated in Equation I–11 of this subpart, including where your fab used less than 50 kg of a particular fluorinated GHG or N_2O used at your facility for which you have not calculated emissions using Equations I–6, I–7, I–8, I–9, I–10, I–21, or I–22 of this subpart, the chemical name of the GHG used, the annual consumption of the gas, and a brief description of its use.

(l) All inputs used to calculate gas consumption in Equation I–11 of this subpart, for each fluorinated GHG and N_2O used.

(m) Annual amount of each fluorinated GHG consumed for process sub-type, process type, stack system, or fab, as appropriate, and the annual amount of N_2O consumed for the aggregate of all chemical vapor deposition processes and for the aggregate of all other electronics manufacturing production processes, as calculated using Equation I–13 of this subpart.

(n) Disbursements for each fluorinated GHG and N_2O during the reporting year, as calculated using Equation I–12 of this subpart and all inputs used to calculate disbursements for each fluorinated GHG and N_2O used in Equation I–12 of this subpart, including all fab-wide gas-specific heel factors used for each fluorinated GHG and N_2O. If your fab used less than 50 kg of a particular fluorinated GHG during the reporting year, fab-wide gas-specific heel factors do not need to be reported for those gases.

(o) Fraction of each fluorinated GHG or N_2O fed into a process sub-type, process type, stack system, or fab that is fed into tools connected to abatement systems.

(p) Fraction of each fluorinated GHG or N_2O destroyed or removed in abatement systems connected to process tools where process sub-type, process type j is used, or to process tools vented to stack system j or fab f.

(q) All inputs and results of calculations made accounting for the uptime of abatement systems used during the reporting year, or during an emissions sampling period, in accordance with Equations I–15 and/or I–23 of this subpart, as applicable.

(r) For fluorinated heat transfer fluid emissions, inputs to the fluorinated heat transfer fluid mass balance equation, Equation I–16 of this subpart, for each fluorinated heat transfer fluid used.

(s) Where missing data procedures were used to estimate inputs into the fluorinated heat transfer fluid mass balance equation under § 98.95(b), the estimates of those data.

■ 10. Section 98.98 is amended by:
■ a. Revising the definitions of ''Abatement system'' and ''By-product formation'';
■ b. Removing the definition of ''Class'';
■ c. Adding a definition for ''Fab'' and ''Fully fluorinated GHGs'';
■ d. Revising the definition of ''Gas utilization'';
■ e. Removing the definition of ''Individual recipe'';
■ f. Adding definitions for ''Input gas'' and ''Intermittent low-use fluorinated GHG'';
■ g. Removing the term ''Maximum designed substrate starts'';
■ h. Adding the term ''Maximum substrate starts'';
■ i. Revising the definitions of ''Operational mode,'' ''Process types,'' ''Properly measured destruction or removal efficiency'' and ''Redundant abatement systems'';
■ j. Adding a definition for ''Representative operating levels'';
■ k. Removing the definitions of ''Similar, with respect to recipes'';
■ l. Adding a definition for ''Stack system'';
■ m. Revising the definitions of ''Trigger point for change out,''
■ n. Adding a definition for ''Unabated emissions''; and
■ o. Revising the definitions of ''Uptime'' and ''Wafer passes.''

The revisions read as follows:

§ 98.98 Definitions.

* * * * *

Abatement system means a device or equipment that is designed to destroy or remove fluorinated GHGs or N_2O in exhaust streams from one or more electronics manufacturing production processes, or for which the destruction or removal efficiency for a fluorinated GHG or N_2O has been properly measured according to the procedures under § 98.94(f)(4), even if that abatement system is not designed to destroy or remove fluorinated GHGs or N_2O. The device or equipment is only an abatement system for the individual fluorinated GHGs or N_2O that it is designed to destroy or remove or for the individual fluorinated GHGs or N_2O for which destruction or removal efficiencies were properly measured according to the procedures under § 98.94(f)(4).

* * * * *

By-product formation means the creation of fluorinated GHGs during electronics manufacturing production processes or the creation of fluorinated GHGs by an abatement system. Where the procedures in § 98.93(a) are used to calculate annual emissions, by-product formation is the ratio of the mass of the by-product formed to the mass flow of the input gas. Where the procedures in § 98.93(i) are used to calculate annual emissions, by-product formation is the ratio of the mass of the by-product formed to the total mass flow of all fluorinated GHG input gases.

* * * * *

Fab means the portion of an electronics manufacturing facility located in a separate physical structure that began manufacturing on a certain date.

* * * * *

Fully fluorinated GHGs means fluorinated GHGs that contain only single bonds and in which all available valence locations are filled by fluorine atoms. This includes, but is not limited to, saturated perfluorocarbons, SF_6, NF_3, SF_5CF_3, C_4F_8O, fully fluorinated linear, branched, and cyclic alkanes, fully fluorinated ethers, fully fluorinated tertiary amines, fully fluorinated aminoethers, and perfluoropolyethers.

Gas utilization means the fraction of input N_2O or fluorinated GHG converted to other substances during the etching, deposition, and/or wafer and chamber cleaning processes. Gas utilization is expressed as a rate or factor for specific electronics manufacturing process sub-types or process types.

* * * * *

Input gas means a fluorinated GHG or N_2O used in one of the processes described in § 98.90(a)(1) through (4)

Intermittent low-use fluorinated GHG, for the purposes of determining fluorinated GHG emissions using the stack testing method, means a fluorinated GHG that meets all of the following:

(1) The fluorinated GHG is used by the fab but is not used during the period of stack testing for the fab/stack system.

(2) The emissions of the fluorinated GHG, estimated using the methods in § 98.93(i)(4) do not constitute more than 5 percent of the total fluorinated GHG emissions from the fab on a CO_2e basis.

(3) The sum of the emissions of all fluorinated GHGs that are considered intermittent low use gases does not exceed 10,000 metric tons CO_2e for the fab for that year, as calculated using the procedures specified in § 98.93(i)(1) of this subpart.

(4) The fluorinated GHG is not an expected or possible by-product identified in Table I–17 of this subpart.

Maximum substrate starts means for the purposes of Equation I–5 of this subpart, the maximum quantity of substrates, expressed as surface area, that could be started each month during a reporting year based on the equipment installed in that facility and assuming that the installed equipment were fully utilized. Manufacturing equipment is considered installed when it is on the manufacturing floor and connected to required utilities.

* * * * *

Operational mode means the time in which an abatement system is properly installed, maintained, and operated according to the site maintenance plan for abatement systems as required in § 98.94(f)(1) and defined in § 98.97(d)(9). This includes being properly operated within the range of parameters as specified in the site maintenance plan for abatement systems.

* * * * *

Process types are broad groups of manufacturing steps used at a facility associated with substrate (e.g., wafer) processing during device manufacture for which fluorinated GHG emissions and fluorinated GHG consumption is calculated and reported. The process types are Plasma etching/Wafer Cleaning and Chamber cleaning.

Properly measured destruction or removal efficiency means destruction or removal efficiencies measured in accordance with EPA 430–R–10–003 (incorporated by reference, see § 98.7), and, if applicable, Appendix A to this subpart, or by an alternative method approved by the Administrator as specified in § 98.94(k).

* * * * *

Redundant abatement systems means a system that is specifically designed, installed and operated for the purpose of destroying fluorinated GHGs and N_2O gases, or for which the destruction or removal efficiency for a fluorinated GHG or N_2O has been properly measured according to the procedures under § 98.94(f)(4), and that is used as a backup to the main fluorinated GHGs and N_2O abatement system during those times when the main system is not functioning or operating in accordance with design and operating specifications.

* * * * *

Representative operating levels means (for purposes of verification of the apportionment model or for determining the appropriate conditions for stack testing) operating the fab, in terms of substrate starts for the period of testing or monitoring, at no less than 50 percent of installed production capacity or no less than 70 percent of the average production rate for the reporting year, where production rate for the reporting year is represented in average monthly substrate starts. For the purposes of stack testing, the period for determining the representative operating level must be the period ending on the same date on which testing is concluded.

Stack system means one or more stacks that are connected by a common header or manifold, through which a fluorinated GHG-containing gas stream originating from one or more fab processes is, or has the potential to be, released to the atmosphere. For purposes of this subpart, stack systems do not include emergency vents or bypass stacks through which emissions are not usually vented under typical operating conditions.

Trigger point for change out means the residual weight or pressure of a gas container type that a facility uses as an indicator that operators need to change out that gas container with a full container. The trigger point is not the actual residual weight or pressure of the gas remaining in the cylinder that has been replaced.

Unabated emissions means a gas stream containing fluorinated GHG or N_2O that has exited the process, but which has not yet been introduced into an abatement system to reduce the mass of fluorinated GHG or N_2O in the stream. If the emissions from the process are not routed to an abatement system, or are routed to an abatement device that is not in an operational mode, unabated emissions are those fluorinated GHG or N_2O released to the atmosphere.

Uptime means the ratio of the total time during which the abatement system is in an operational mode, to the total time during which production process tool(s) connected to that abatement system are normally in operation.

* * * * *

Wafer passes is a count of the number of times a wafer substrate is processed in a specific process sub-type, or type. The total number of wafer passes over a reporting year is the number of wafer passes per tool multiplied by the number of operational process tools in use during the reporting year.

* * * * *

■ 11. Table I–1 to subpart I of Part 98 is amended by revising the Note to read as follows:

Table I–1 to Subpart I of Part 98—Default Emission Factors for Threshold Applicability Determination

* * * * *

Notes: NA denotes not applicable based on currently available information.

■ 12. Table I–3 to subpart I of Part 98 is revised to read as follows:

Table I–3 to Subpart I of Part 98—Default Emission Factors ($1–U_{ij}$) for Gas Utilization Rates (U_{ij}) and By-Product Formation Rates (B_{ijk}) for Semiconductor Manufacturing for 150mm and 200 mm Wafer Sizes

Process Type/ Sub-Type	Process Gas i												
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_2HF_5	CH_3F	C_3F_8	C_4F_8	NF_3	SF_6	C_4F_6	C_5F_8	C_4F_8O
ETCHING/ WAFER CLEANING													
$1-U_i$	0.81	0.72	0.50	0.13	0.064	0.51	NA	0.14	0.19	0.55	0.17	0.072	NA
BCF_4	NA	0.10	0.085	0.079	0.077	NA	NA	0.11	0.0040	0.13	0.13	NA	NA
BC_2F_6	0.046	NA	0.030	0.025	0.024	NA	NA	0.037	0.025	0.11	0.11	0.014	NA
BC_4F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_4F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_5F_8	0.0012	NA	0.0012	NA	NA	NA	NA	0.0086	NA	NA	NA	NA	NA
$BCHF_3$	0.10	0.047	NA	0.049	NA	0.0034	NA	0.040	NA	0.0012	0.066	0.0039	NA
CHAMBER CLEANING													
In situ plasma cleaning													
$1-U_i$	0.92	0.55	NA	NA	NA	NA	0.40	0.10	0.18	NA	NA	NA	0.14
BCF_4	NA	0.21	NA	NA	NA	NA	0.20	0.11	0.050	NA	NA	NA	0.13
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.045
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Remote plasma cleaning													
$1-U_i$	NA	NA	NA	NA	NA	NA	NA	NA	0.018	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	0.015	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
In situ thermal cleaning													
$1-U_i$	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Notes: NA = Not applicable; i.e., there are no applicable default emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

■ 13. Table I–4 to subpart I of Part 98 is revised to read as follows:

Table I–4 to Subpart I of Part 98–Default Emission Factors ($1–U_{ij}$) for Gas Utilization Rates (U_{ij}) and By-Product Formation Rates (B_{ijk}) for Semiconductor Manufacturing for 300 mm and 450 mm Wafer Size

Process Type/Sub-Type	Process Gas i											
	CF_4	C_2F_6	CHF_3	CH_2F_2	CH_3F	C_3F_8	C_4F_8	NF_3	SF_6	C_4F_6	C_5F_8	C_4F_8O
	ETCHING/WAFER CLEANING											
$1-U_i$	0.65	0.80	0.42	0.21	0.33	0.30	0.18	0.15	0.32	0.15	0.10	NA
BCF_4	NA	0.21	0.095	0.049	0.045	0.21	0.045	0.046	0.040	0.059	0.11	NA
BC_2F_6	0.079	NA	0.064	0.052	0.00087	0.18	0.031	0.045	0.044	0.074	0.083	NA
BC_4F_6	NA	NA	0.00010	NA	NA	NA	0.018	NA	NA	NA	NA	NA
BC_4F_8	0.00063	NA	0.00080	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.00012	NA
$BCHF_3$	0.011	NA	NA	0.050	0.0057	0.012	0.027	0.025	0.0037	0.019	0.0069	NA
BCH_2F_2	NA	NA	0.0036	NA	0.0023	NA	0.0015	0.00086	0.000029	0.000030	NA	NA
BCH_3F	0.0080	NA	0.0080	0.0080	NA	0.00073	NA	0.0080	NA	NA	NA	NA
	CHAMBER CLEANING											
	In situ plasma cleaning											
$1-U_i$	NA	NA	NA	NA	NA	NA	NA	0.23	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	0.037	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Remote plasma cleaning											
$1-U_i$	NA	NA	NA	NA	NA	0.063	NA	0.018	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	0.075	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Process Type/Sub-Type	Process Gas i											
	CF_4	C_2F_6	CHF_3	CH_2F_2	CH_3F	C_3F_8	C_4F_8	NF_3	SF_6	C_4F_6	C_5F_8	C_4F_8O
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	In situ thermal cleaning											
$1\text{-}U_i$	NA	NA	NA	NA	NA	NA	NA	0.28	NA	NA	NA	NA
BCF_4	NA	NA	NA	NA	NA	NA	NA	0.010	NA	NA	NA	NA
BC_2F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Notes: NA = Not applicable; i.e., there are no applicable default emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

■ 14. Table I–5 to subpart I of Part 98 is amended by revising the heading and entries for ''CVD 1–U_i,'' ''CVD BCF_4,'' and ''CVD BC_3F_8;'' and by revising the Note to read as follows:

Table I–5 to Subpart I of Part 98—Default Emission Factors (1–U_{ij}) for Gas Utilization Rates (U_{ij}) and By-Product Formation Rates (B_{ijk}) for MEMS Manufacturing

Process type factors	Process gas i											
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3 Remote	NF_3	SF_6	C_4F_{6a}	C_5F_{8a}	$C_4F_8O_a$
* * * * * * *												
CVD Chamber Cleaning 1–U_i	0.9	0.6	NA	NA	0.4	0.1	0.02	0.2	NA	NA	0.1	0.1
CVD Chamber Cleaning BCF_4	NA	0.1	NA	NA	0.1	0.1	[2]0.02	[2]0.1	NA	NA	0.1	0.1
CVD Chamber Cleaning BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.4

Notes: NA = Not applicable; i.e., there are no applicable default emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

[1] Estimate includes multi-gas etch processes.

[2] Estimate reflects presence of low-k, carbide and multi-gas etch processes that may contain a C-containing fluorinated GHG additive.

■ 15. Table I–6 to subpart I of Part 98 is amended by revising the heading, entries for ''CVD 1–U_i'' and by the Note to read as follows:

Table I–6 to Subpart I of Part 98—Default Emission Factors (1–U_{ij}) for Gas Utilization Rates (U_{ij}) and By-Product Formation Rates (B_{ijk}) for LCD Manufacturing

Process type factors	Process Gas i								
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3 Remote	NF_3	SF_6
* * * * * * *									
CVD Chamber Cleaning 1–U_i	NA	NA	NA	NA	NA	NA	0.03	0.3	0.9

Notes: NA = Not applicable; i.e., there are no applicable default emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

■ 16. Table I–7 to subpart I of part 98 is amended by revising the heading, entries for ''CVD 1–U_i'' and ''CVD BCF_4'' and the Note to read as follows:

Table I–7 to Subpart I of Part 98—Default Emission Factors (1–U_{ij}) for Gas Utilization Rates (U_{ij}) and By-Product Formation Rates (B_{ijk}) for PV Manufacturing

Process type factors	Process Gas i								
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3 Remote	NF_3	SF_6
* * * * * * *									
CVD Chamber Cleaning 1–U_i	NA	0.6	NA	NA	0.1	0.1	NA	0.3	0.4
CVD Chamber Cleaning BCF_4	NA	0.2	NA	NA	0.2	0.1	NA	NA	NA

Notes: NA = Not applicable; i.e., there are no applicable default emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

■ 17. Subpart I is amended by adding Table I–9 to subpart I to read as follows:

Table I-9 to Subpart I of Part 98—Methods and Procedures for Conducting Emissions Tests for Stack Systems

For each stack system for which you use the "stack test method" to calculate annual emissions...	You must...	Using...
For each fluorinated GHG	Measure the concentration in the stack system.	Method 320 at 40 CFR part 63, appendix A or ASTM D6348-03[a] (incorporated by reference, see § 98.7). Conduct the test run for a minimum of 8 hours for each stack system.
	Select sampling port locations and the number of traverse points.	Method 1 or 1A at 40 CFR part 60, appendix A-1.
	Determine gas velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G at 40 CFR part 60, appendix A-1 and A-2.
	Determine gas molecular weight.	Method 3, 3A, or 3B at 40 CFR part 60, appendix A-2 using the same sampling site and time as fluorinated GHG sampling.
	Measure gas moisture content.	Method 4 at 40 CFR part 60, appendix A-3, or using FTIR[b].

[a] Reporters may use ASTM D6348-03 (incorporated by reference, see § 98.7) as an alternative to Method 320 at 40 CFR part 63, appendix A, with the following additional requirements: (1) The test plan preparation and implementation in the Annexes to ASTM D6348-03, Sections A1 through A8 are mandatory; and (2) In ASTM D6348-03 Annex A5 (Analyte Spiking Technique), the percent recovery (%R) must be determined for each target analyte (Equation A5.5). The reporter must also follow Section 4.1 of ASTM D6348-03 to ensure F-GHG remain in the gas phase. In order for the test data to be acceptable for a compound, the percent recovery must be between 70 and 130 percent. If the percent recovery does not meet this criterion for a target compound, the test data are not acceptable for that compound and the test must be repeated for that analyte (i.e., the sampling and/or analytical procedure should be adjusted before a retest). The percent recovery value for each compound must be reported in the test report, required under 40 CFR 98.94(j)(4), and all field measurements must be corrected with the calculated percent recovery value for that compound by using the following equation: Reported Result = Measured Concentration in the stack x (100/% R).

[b] Extractive FTIR is an acceptable method, in lieu of Method 4 at 40 CFR part 60 appendix A, of determining the volumetric concentrations of moisture in semiconductor stack gas streams. The spectral calibrations employed should bracket the anticipated range of optical depths (H_2O concentration in parts per million multiplied by FTIR sample cell path length) measured in the field for moisture saturated (relative humidity approximately 100 percent) air streams at temperatures characterized via Method 2 at 40 CFR part 60 appendix A, within the stack. The HITRAN molecular spectroscopic database is an

example of a widely used international standard of IR absorption parameters that provide accurate H_2O FTIR calibrations at atmospheric conditions. Field measurements should be verified to be in line with moisture saturated wet scrubber exhaust concentrations at measured temperatures. Field measurements at saturated conditions should be verified to be consistent with published water vapor pressure curves at the current stack temperatures (Perry, R.H. and D.W. Green. Perry's Chemical Engineer's Handbook (8th Edition). McGraw-Hill Publishing Company, Inc. New York, New York. 2008). For unsaturated conditions, field measurements should be verified using a single point verification of the FTIR moisture reading using Method 4 at 40 CFR part 60 appendix A, or a NIST traceable hygrometer accurate to +/- 2 percent relative humidity. The FTIR moisture reading shall agree within 10 percent of the moisture measurement obtained using Method 4 at 40 CFR part 60 appendix A or a NIST traceable hygrometer.

■ 18. Subpart I is amended by adding Table I–10 to subpart I to read as follows:

TABLE I–10 TO SUBPART I OF PART 98—MAXIMUM FIELD DETECTION LIMITS APPLICABLE TO FLUORINATED GHG CONCENTRATION MEASUREMENTS FOR STACK SYSTEMS

Fluorinated GHG Analyte	Maximum field detection limit (ppbv)
CF_4	20
C_2F_6	20
C_3F_8	20
C_4F_6	20
C_5F_8	20
c–C_4F_8	20
CH_2F_2	40
CH_3F	40
CHF_3	20
NF_3	20
SF_6	4
Other fully fluorinated GHGs	20
Other fluorinated GHGs	40

ppbv—Parts per billion by volume.

■ 19. Subpart I is amended by adding Table I–11 to subpart I to read as follows:

Table I–11 to Subpart I of Part 98–Default Emission Factors ($1–U_{ij}$) for Gas Utilization Rates (U_{ij}) and By-Product Formation Rates (B_{ijk}) for Semiconductor Manufacturing for use with the Stack Test Method (150 mm and 200 mm wafers)

All Processes	Process Gas i													
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_2HF_5	CH_3F	C_3F_8	C_4F_8	NF_3	NF_3 Remote	SF_6	C_4F_6	C_5F_8	C_4F_8O
$1-U_i$	0.85	0.56	0.50	0.13	0.064	0.51	0.40	0.13	0.16	0.018	0.55	0.17	0.072	0.14
BCF_4	NA	0.19	0.085	0.079	0.077	NA	0.20	0.11	0.045	0.015	0.13	0.13	NA	0.13
BC_2F_6	0.046	NA	0.030	0.025	0.024	0.0034	NA	0.037	0.025	NA	0.11	0.11	0.014	0.045
BC_4F_6	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_4F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_5F_8	0.0012	NA	0.0012	NA	NA	NA	NA	0.0086	NA	NA	NA	NA	NA	NA
$BCHF_3$	0.10	0.047	NA	0.049	NA	NA	NA	0.040	NA	NA	0.0012	0.066	0.0039	NA

Notes: NA = Not applicable; i.e., there are no applicable emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

■ 20. Subpart I is amended by adding Table I–12 to subpart I to read as follows:

Table I–12 to Subpart I of Part 98–Default Emission Factors ($1–U_{ij}$) for Gas Utilization Rates (U_{ij}) and By-Product Formation Rates (B_{ijk}) for Semiconductor Manufacturing for use with the Stack Test Method (300 mm and 450 mm Wafer Sizes)

All Processes	Process Gas i												
	CF_4	C_2F_6	CHF_3	CH_2F_2	CH_3F	C_3F_8	C_4F_8	NF_3	NF_3 Remote	SF_6	C_4F_6	C_5F_8	C_4F_8O
$1-U_i$	0.65	0.80	0.42	0.21	0.33	0.20	0.18	0.20	0.018	0.32	0.15	0.10	NA
BCF_4	NA	0.21	0.095	0.049	0.045	0.21	0.045	0.040	0.075	0.040	0.059	0.11	NA
BC_2F_6	0.079	NA	0.064	0.052	0.00087	0.18	0.031	0.045	NA	0.044	0.074	0.083	NA
BC_4F_6	NA	NA	0.00010	NA	NA	NA	0.018	NA	NA	NA	NA	NA	NA
BC_4F_8	0.00063	NA	0.00080	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.00012	NA
BCH_2F_2	NA	NA	0.0036	NA	0.0023	NA	0.0015	0.00086	NA	0.000029	0.000030	NA	NA
BCH_3F	0.0080	NA	0.0080	0.0080	NA	0.00073	NA	0.0080	NA	NA	NA	NA	NA
$BCHF_3$	0.011	NA	NA	0.050	0.0057	0.012	0.027	0.025	NA	0.0037	0.019	0.0069	NA

Notes: NA = Not applicable; i.e., there are no applicable emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

■ 21. Subpart I is amended by adding Table I–13 to subpart I to read as follows:

Table I–13 to Subpart I of Part 98—Default Emission Factors ($1–U_{ij}$) for Gas Utilization Rates (U_{ij}) and By-Product Formation Rates (B_{ijk}) for LCD Manufacturing for use with the Stack Test Method

Process Gas (i)	Process Gas i								
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3 Remote	NF_3	SF_6
$1–U_i$	0.6	NA	0.2	NA	NA	0.1	0.03	0.3	0.6
BCF_4	NA	NA	0.07	NA	NA	0.009	NA	NA	NA
$BCHF_3$	NA	NA	NA	NA	NA	0.02	NA	NA	NA
BC_2F_6	NA	NA	0.05	NA	NA	NA	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA

Notes: NA = Not applicable; i.e., there are no applicable emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

■ 22. Subpart I is amended by adding Table I–14 to subpart I to read as follows:

Table I–14 to Subpart I of Part 98—Default Emission Factors ($1–U_{ij}$) for Gas Utilization Rates (U_{ij}) and By-Product Formation Rates (B_{ijk}) for PV Manufacturing for use with the Stack Test Method

Process Gas (i)	Process Gas i								
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3 Remote	NF_3	SF_6
$1–U_i$	0.7	0.6	0.4	NA	0.4	0.2	NA	0.2	0.4
BCF_4	NA	0.2	NA	NA	0.2	0.1	NA	0.05	NA
BC_2F_6	NA	NA	NA	NA	NA	0.1	NA	NA	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA

Notes: NA = Not applicable; i.e., there are no applicable emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

■ 23. Subpart I is amended by adding Table I–15 to subpart I to read as follows:

Table I–15 to Subpart I of Part 98–Default Emission Factors ($1–U_{ij}$) for Gas Utilization Rates (U_{ij}) and By-Product Formation Rates (B_{ijk}) for MEMS Manufacturing for use with the Stack Test Method

All Processes	Process Gas i											
	CF_4	C_2F_6	CHF_3	CH_2F_2	C_3F_8	c-C_4F_8	NF_3 Remote	NF_3	SF_6	C_4F_6	C_5F_8	C_4F_8O
$1-U_i$	0.9	0.6	0.4	0.1	0.4	0.1	0.2	0.2	0.2	0.1	0.1	0.1
BCF_4	NA	0.2	0.07	0.08	0.1	0.1	[a]0.02	0.09	NA	0.3	0.1	0.1
BC_2F_6	NA	NA	NA	NA	NA	[a]0.04	NA	NA	NA	0.2	0.04	NA
BC_3F_8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Notes: NA = Not applicable; i.e., there are no applicable emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

[a] Estimate reflects presence of low-k, carbide and multi-gas etch processes that may contain a C-containing fluorinated GHG additive.

■ 24. Subpart I is amended by adding Table I–16 to read as follows:

TABLE I–16 TO SUBPART I OF PART 98—DEFAULT EMISSION DESTRUCTION OR REMOVAL EFFICIENCY (DRE) FACTORS FOR ELECTRONICS MANUFACTURING

Manufacturing type/process type/gas	Default DRE (percent)
MEMS, LCDs, and PV Manufacturing	60
Semiconductor Manufacturing:	
Plasma Etch/Wafer Clean Process Type:	
CF_4	75
CH_3F	97
CHF_3	97
CH_2F_2	97
C_2F_6	97
C_3F_8	97
C_4F_6	97
C_4F_8	97
C_5F_8	97
SF_6	97
NF_3	96
All other carbon-based plasma etch/wafer clean fluorinated GHG	60
Chamber Clean Process Type:	
NF_3	88
All other chamber clean fluorinated GHG	60
N_2O Processes:	
CVD and all other N_2O-using processes	60

■ 25. Subpart I is amended by adding Table I–17 to subpart I to read as follows:

TABLE I–17 TO SUBPART I OF PART 98—EXPECTED AND POSSIBLE BY-PRODUCTS FOR ELECTRONICS MANUFACTURING

For each stack system for which you use the "stack test method" to calculate annual emissions, you must measure the following:	If emissions are detected intermittently, use the following procedures:	If emissions are not detected, use the following procedures:
Expected By-products: CF_4, C_2F_6, CHF_3, CH_2F_2, CH_3F	Use the measured concentration for "X_{ksm}" in Equation I–18 when available and use one-half of the field detection limit you determined for the fluorinated GHG according to § 98.94(j)(2) for the value of "X_{ksm}" when the fluorinated GHG is not detected.	Use one-half of the field detection limit you determined for the fluorinated GHG according to § 98.94(j)(2) for the value of "X_{ksm}" in Equation I–18.
Possible By-products: C_3F_8, C_4F_6, c-C_4F_8, C_5F_8	Use the measured concentration for "X_{ksm}" in Equation I–18 when available and use one-half of the field detection limit you determined for the fluorinated GHG according to § 98.94(j)(2) for the value of "X_{ksm}" when the fluorinated GHG is not detected.	Assume zero emissions for that fluorinated GHG for the tested stack system.

■ 26. Subpart I is amended by adding Appendix A to Subpart I of Part 98 to read as follows:

Appendix A to Subpart I of Part 98—Alternative Procedures for Measuring Point-of-Use Abatement Device Destruction or Removal Efficiency

If you are measuring destruction or removal efficiency of a point-of-use abatement device according to EPA 430–R–10–003 (incorporated by reference, see § 98.7) as specified in § 98.94(f)(4), you may follow the alternative procedures specified in paragraphs (a) through (c) of this appendix.

(a) In place of the Quadrupole Mass Spectrometry protocol requirements specified in section 2.2.4 of EPA 430–R–10–003 (incorporated by reference, see § 98.7), you must conduct mass spectrometry testing in accordance with the provisions in paragraph (a)(1) through (a)(15) of this appendix.

(1) *Detection limits.* The mass spectrometer chosen for this application must have the necessary sensitivity to detect the selected effluent species at or below the maximum field detection limits specified in Table 3 of section 2.2.7 of EPA 430–R–10–003 (incorporated by reference, see § 98.7).

(2) *Sampling location.* The sample at the inlet of the point-of-use abatement device must be taken downstream of the process tool and pump package. The sample exhaust must be vented back into the corrosive house ventilation system at a point downstream of the sample inlet location.

(3) *Sampling conditions.* For etch processes, destruction or removal efficiencies must be determined while etching a substrate (product, dummy, or test). For chemical vapor deposition processes, destruction or removal efficiencies must be determined during a chamber clean after deposition (destruction or removal efficiencies must not be determined in a clean chamber). All sampling must be performed non-intrusively during wafer processing. Samples must be drawn through the mass spectrometer source

by an external sample pump. Because of the volatility, vapor pressure, stability and inertness of CF_4, C_2F_6, C_3F_8, CHF_3, NF_3, and SF_6, the sample lines do not need to be heated.

(4) Mass spectrometer parameters. The specific mass spectrometer operating conditions such as electron energy, secondary electron multiplier voltage, emission current, and ion focusing voltage must be selected according to the specifications provided by the mass spectrometer manufacturer, the mass spectrometer system manual, basic mass spectrometer textbook, or other such sources. The mass spectrometer responses to each of the target analytes must all be calibrated under the same mass spectrometer operating conditions.

(5) *Flow rates.* A sample flow rate of 0.5–1.5 standard liters per minute (slm) must be drawn from the process tool exhaust stream under study.

(6) *Sample frequency.* The mass spectrometer sampling frequency for etch processes must be in the range of 0.5 to 1 cycles per second, and for chemical vapor deposition processes must be in the range of 0.25 to 0.5 cycles per second. As an alternative you may use the sampling frequencies specified in section 2.2.4 of EPA 430–R–10–003 (incorporated by reference, see § 98.7).

(7) *Dynamic dilution calibration parameters.* The quadrupole mass spectrometer must be calibrated for both mass location and response to analytes. A dynamic dilution calibration system may be used to perform both types of mass spectrometer system calibrations using two mass flow controllers. Use one mass flow controller to regulate the flow rate of the standard component used to calibrate the system and the second mass flow controller to regulate the amount of diluent gas used to mix with the standard to generate the calibration curve for each compound of interest. The mass flow controller must be calibrated using the single component gas being used with them, for example, nitrogen (N_2) for the diluent. A mass flow controller used with calibration mixtures must be calibrated with the calibration mixture balance gas (for example, N_2 or He) if the analyte components are 2 percent or less of the volume of the sample. All calibration mixtures must be National Institute of Standards and Technology Traceable gases or equivalent. They must be calibrated over their range of use and must be operated in their experimentally determined dynamic linear range. If compressed gas standards cannot be brought into the fab, metered gas flows of target compounds into the process chamber, under no thermal or plasma conditions and with no wafer(s) present, and with no process emissions from other tools contributing to the sample location, must then be performed throughout the appropriate concentration ranges to derive calibration curves for the subsequent destruction or removal efficiency tests.

(8) *Mass location calibration.* A mixture containing 1 percent He, Ar, Kr, and Xe in a balance gas of nitrogen must be used to assure the alignment of the quadrupole mass filter (see EPA Method 205 at 40 CFR part 51, appendix M as reference). The mass spectrometer must be chosen so that the mass range is sufficient to detect the predominant peaks of the components under study.

(9) *Quadrupole mass spectrometer response calibration.* A calibration curve must be generated for each compound of interest.

(10) *Calibration frequency.* The mass spectrometer must be calibrated at the start of testing a given process. The calibration must be checked at the end of testing.

(11) *Calibration range.* The mass spectrometer must be calibrated over the expected concentration range of analytes using a minimum of five concentrations including a zero. The zero point is defined as diluent containing no added analyte.

(12) *Operating procedures.* You must follow the operating procedures specified in paragraphs (a)(12)(i) through (v) of this appendix.

(i) You must perform a qualitative mass calibration by running a standard (or by flowing chamber gases under non-process conditions) containing stable components such as Ar, Kr, and Xe that provide predominant signals at m/e values distributed throughout the mass range to be used. You must adjust the quadrupole mass filter as needed to align with the inert gas fragments.

(ii) You must quantitatively calibrate the quadrupole mass spectrometer for each analyte of interest. The analyte concentrations during calibration must include the expected concentrations in the process effluent. The calibration must be performed under the same operating conditions, such as inlet pressure, as when sampling process exhaust. If the calibration inlet pressure differs from the sampling inlet pressure then the relationship between inlet pressure and quadrupole mass spectrometer signal response must be empirically determined and applied to correct for any differences between calibration and process emissions monitoring data.

(iii) To determine the response time of the instrument to changes in a process, a process gas such as C_2F_6 must be turned on at the process tool for a fixed period of time (for example, 20 seconds), after which the gas is shut off. The sample flow rate through the system must be adjusted so that the signal increases to a constant concentration within a few seconds and decreases to background levels also within a few seconds.

(iv) You must sample the process effluent through the quadrupole mass spectrometer and acquire data for the required amount of time to track the process, as determined in paragraph (a)(12)(iii) of this appendix. You must set the sample frequency to monitor the changes in the process as specified in paragraph (a)(6) of this appendix. You must repeat this for at least five substrates on the same process and calculate the average and standard deviation of the analyte concentration.

(v) You must repeat the quantitative calibration at the conclusion of sampling to identify any drifts in quadrupole mass spectrometer sensitivity. If drift is observed, you must use an internal standard to correct for changes in sensitivity.

(13) *Sample analysis.* To determine the concentration of a specific component in the sample, you must divide the ion intensity of the sample response by the calibrated response factor for each component.

(14) *Deconvolution of interfering peaks.* The effects of interfering peaks must be deconvoluted from the mass spectra for each target analyte.

(15) *Calculations.* Plot ion intensity versus analyte concentration for a given compound obtained when calibrating the analytical system. Determine the slope and intercept for each calibrated species to obtain response factors with which to calculate concentrations in the sample. For an acceptable calibration, the R^2 value of the calibration curve must be at least 0.98.

(b) In place of the Fourier Transform Infrared Spectroscopy protocol requirements specified in section 2.2.4 of EPA 430–R–10–003 (incorporated by reference, see § 98.7), you may conduct Fourier Transform Infrared Spectroscopy testing in accordance with the provisions in paragraph (b)(1) through (17) of this appendix, including the laboratory study phase described in paragraphs (b)(1) through (7), and the field study phase described in paragraphs (b)(8) through (17) of this appendix.

(1) *Conformance with provisions associated with the Calibration Transfer Standard.* This procedure calls for the use of a calibration transfer standard in a number of instances. The use of a calibration transfer standard is necessary to validate optical pathlength and detector response for spectrometers where cell temperature, cell pressure, and cell optical pathlength are potentially variable. For fixed pathlength spectrometers capable of controlling cell temperature and pressure to within +/− 10 percent of a desired set point, the use of a calibration transfer standard, as described in paragraphs (b)(2) to (17) this appendix is not required.

(2) *Defining spectroscopic conditions.* Define a set of spectroscopic conditions under which the field studies and subsequent field applications are to be carried out. These include the minimum instrumental line-width, spectrometer wave number range, sample gas temperature, sample gas pressure, absorption pathlength, maximum sampling system volume (including the absorption cell), minimum sample flow rate, and maximum allowable time between consecutive infrared analyses of the effluent.

(3) *Criteria for reference spectral libraries.* On the basis of previous emissions test results and/or process knowledge (including the documentation of results of any initial and subsequent tests, and the final reports required in § 98.97(d)(4)(i)), estimate the maximum concentrations of all of the analytes in the effluent and their minimum concentrations of interest (those concentrations below which the measurement of the compounds is of no importance to the analysis). Values between the maximum expected concentration and the minimum concentration of interest are referred to below as the ''expected concentration range.'' A minimum of three reference spectra is sufficient for a small expected concentration range (e.g., a

difference of 30 percent of the range between the low and high ends of the range), but a minimum of four spectra are needed where the range is greater, especially for concentration ranges that may differ by orders of magnitude. If the measurement method is not linear then multiple linear ranges may be necessary. If this approach is adopted, then linear range must be demonstrated to pass the required quality control. When the set of spectra is ordered according to absorbance, the absorbance levels of adjacent reference spectra should not differ by more than a factor of six. Reference spectra for each analyte should be available at absorbance levels that bracket the analyte's expected concentration range; minimally, the spectrum whose absorbance exceeds each analyte's expected maximum concentration or is within 30 percent of it must be available. The reference spectra must be collected at or near the same temperature and pressure at which the sample is to be analyzed under. The gas sample pressure and temperature must be continuously monitored during field testing and you must correct for differences in temperature and pressure between the sample and reference spectra. Differences between the sample and reference spectra conditions must not exceed 50 percent for pressure and 40 °C for temperature.

(4) *Spectra without reference libraries.* If reference spectral libraries meeting the criteria in paragraph (b)(3) of this appendix do not exist for all the analytes and interferants or cannot be accurately generated from existing libraries exhibiting lower minimum instrumental line-width values than those proposed for the testing, prepare the required spectra according to the procedures specified in paragraphs (b)(4)(i) and (ii) of this appendix.

(i) Reference spectra at the same absorbance level (to within 10 percent) of independently prepared samples must be recorded. The reference samples must be prepared from neat forms of the analyte or from gas standards of the highest quality commonly available from commercial sources. Either barometric or volumetric methods may be used to dilute the reference samples to the required concentrations, and the equipment used must be independently calibrated to ensure suitable accuracy. Dynamic and static reference sample preparation methods are acceptable, but dynamic preparations must be used for reactive analytes. Any well characterized absorption pathlength may be employed in recording reference spectra, but the temperature and pressure of the reference samples should match as closely as possible those of the proposed spectroscopic conditions.

(ii) If a mercury cadmium telluride or other potentially non-linear detector (i.e., a detector whose response vs. total infrared power is not a linear function over the range of responses employed) is used for recording the reference spectra, you must correct for the effects of this type of response on the resulting concentration values. As needed, spectra of a calibration transfer standard must be recorded with the laboratory spectrometer system to verify the absorption pathlength and other aspects of the system performance. All reference spectral data must be recorded in interferometric form and stored digitally.

(5) *Sampling system preparation.* Construct a sampling system suitable for delivering the proposed sample flow rate from the effluent source to the infrared absorption cell. For the compounds of interest, the surfaces of the system exposed to the effluent stream may need to be stainless steel or Teflon; because of the potential for generation of inorganic automated gases, glass surfaces within the sampling system and absorption cell may need to be Teflon-coated. The sampling system should be able to deliver a volume of sample that results in a necessary response time.

(6) *Preliminary analytical routines.* For the proposed absorption pathlength to be used in actual emissions testing, you must prepare an analysis method containing of all the effluent compounds at their expected maximum concentrations plus the field calibration transfer standard compound at 20 percent of its full concentration as needed.

(7) *Documentation.* The laboratory techniques used to generate reference spectra and to convert sample spectral information to compound concentrations must be documented. The required level of detail for the documentation is that which allows an independent analyst to reproduce the results from the documentation and the stored interferometric data.

(8) *Spectroscopic system performance.* The performance of the proposed spectroscopic system, sampling system, and analytical method must be rigorously examined during and after a field study. Several iterations of the analysis method may need to be applied depending on observed concentrations, absorbance intensities, and interferences. During the field study, all the sampling and analytical procedures envisioned for future field applications must be documented. Additional procedures not required during routine field applications, notably dynamic spiking studies of the analyte gases, may be performed during the field study. These additional procedures need to be performed only once if the results are acceptable and if the effluent sources in future field applications prove suitably similar to those chosen for the field study. If changes in the effluent sources in future applications are noted and require substantial changes to the analytical equipment and/or conditions, a separate field study must be performed for the new set of effluent source conditions. All data recorded during the study must be retained and documented, and all spectral information must be permanently stored in interferometric form.

(9) *System installation.* The spectroscopic and sampling sub-systems must be assembled and installed according to the manufacturers' recommendations. For the field study, the length of the sample lines used must not be less than the maximum length envisioned for future field applications. The system must be given sufficient time to stabilize before testing begins.

(10) *Pre-Test calibration.* Record a suitable background spectrum using pure nitrogen gas; alternatively, if the analytes of interest are in a sample matrix consistent with ambient air, it is beneficial to use an ambient air background to control interferences from water and carbon dioxide. For variable pathlength Fourier Transform Infrared Spectrometers, introduce a sample of the calibration transfer standard gas directly into the absorption cell at the expected sample pressure and record its absorbance spectrum (the ''initial field calibration transfer standard spectrum''). Compare it to the laboratory calibration transfer standard spectra to determine the effective absorption pathlength. If possible, record spectra of field calibration gas standards (single component standards of the analyte compounds) and determine their concentrations using the reference spectra and analytical routines developed in paragraphs (b)(2) through (7) of this appendix; these spectra may be used instead of the reference spectra in actual concentration and uncertainty calculations.

(11) *Deriving the calibration transfer standard gas from tool chamber gases.* The calibration transfer standard gas may be derived by flowing appropriate semiconductor tool chamber gases under non-process conditions (no thermal or plasma conditions and with no wafer(s) present) if compressed gas standards cannot be brought on-site.

(12) *Reactivity and response time checks.* While sampling ambient air and continuously recording absorbance spectra, suddenly replace the ambient air flow with calibration transfer standard gas introduced as close as possible to the probe tip. Examine the subsequent spectra to determine whether the flow rate and sample volume allow the system to respond quickly enough to changes in the sampled gas. Should a corrosive or reactive gas be of interest in the sample matrix it would be beneficial to determine the reactivity in a similar fashion, if practical. Examine the subsequent spectra to ensure that the reactivities of the analytes with the exposed surfaces of the sampling system do not limit the time response of the analytical system. If a pressure correction routine is not automated, monitor the absorption cell temperature and pressure; verify that the (absolute) pressure remains within 2 percent of the pressure specified in the proposed system conditions.

(13) *Analyte spiking.* Analyte spiking must be performed. While sampling actual source effluent, introduce a known flow rate of calibration transfer standard gas into the sample stream as close as possible to the probe tip or between the probe and extraction line. Measure and monitor the total sample flow rate, and adjust the spike flow rate until it represents 10 percent to 20 percent of the total flow rate. After waiting until at least four absorption cell volumes have been sampled, record four spectra of the spiked effluent, terminate the calibration transfer standard spike flow, pause until at least four cell volumes are sampled, and then record four (unspiked) spectra. Repeat this process until 12 spiked and 12 unspiked spectra have been obtained. If a pressure correction routine is not automated, monitor the absorption cell temperature and pressure; verify that the pressure remains within 2

percent of the pressure specified in the proposed system conditions. Calculate the expected calibration transfer standard compound concentrations in the spectra and compare them to the values observed in the spectrum. This procedure is best performed using a spectroscopic tracer to calculate dilution (as opposed to measured flow rates) of the injected calibration transfer standard (or analyte). The spectroscopic tracer should be a component not in the gas matrix that is easily detectable and maintains a linear absorbance over a large concentration range. Repeat this spiking process with all effluent compounds that are potentially reactive with either the sampling system components or with other effluent compounds. The gas spike is delivered by a mass flow controller, and the expected concentration of analyte of interest (AOITheoretical) is calculated as follows:

$$AOI_{Theoretical} = \left(\frac{Tracer_{sample}}{Tracer_{cylinder}}\right)\left(AOI_{cylinder}\right) + \left[1 - \left(\frac{Tracer_{sample}}{Tracer_{cylinder}}\right)\right]\left(AOI_{native}\right)$$

Where:

AOITheoretical = Theoretical analyte of interest concentration (parts per million (ppm)).

Tracersample = Tracer concentration (ppm) as seen by the Fourier Transform Infrared Spectrometer during spiking.

Tracercylinder = The concentration (ppm) of tracer recorded during direct injection of the cylinder to the Fourier Transform Infrared Spectrometer cell.

AOIcylinder = The supplier-certified concentration (ppm) of the analyte of interest gas standard.

AOInative = The native AOI concentration (ppm) of the effluent during stable conditions.

(14) *Post-test calibration.* At the end of a sampling run and at the end of the field study, record the spectrum of the calibration transfer standard gas. The resulting ''final field calibration transfer standard spectrum'' must be compared to the initial field calibration transfer standard spectrum to verify suitable stability of the spectroscopic system throughout the course of the field study.

(15) *Amendment of analytical routines.* The presence of unanticipated interferant compounds and/or the observation of compounds at concentrations outside their expected concentration ranges may necessitate the repetition of portions of the procedures in paragraphs (b)(2) through (14) of this appendix. Such amendments are allowable before final analysis of the data, but must be represented in the documentation required in paragraph (b)(16) of this appendix.

(16) *Documentation.* The sampling and spiking techniques used to generate the field study spectra and to convert sample spectral information to concentrations must be documented at a level of detail that allows an independent analyst to reproduce the results from the documentation and the stored interferometric data.

(17) *Method application.* When the required laboratory and field studies have been completed and if the results indicate a suitable degree of accuracy, the methods developed may be applied to practical field measurement tasks. During field applications, the procedures demonstrated in the field study specified in paragraphs (b)(8) through (16) of this appendix must be adhered to as closely as possible, with the following exceptions specified in paragraphs (b)(17)(i) through (iii) of this appendix:

(i) The sampling lines employed should be as short as practically possible and not longer than those used in the field study.

(ii) Analyte spiking and reactivity checks are required after the installation of or major repair to the sampling system or major change in sample matrix. In these cases, perform three spiked/unspiked samples with calibration transfer standard or a surrogate analyte on a daily basis if time permits and gas standards are easy to obtain and get on-site.

(iii) Sampling and other operational data must be recorded and documented as during the field study, but only the interferometric data needed to sufficiently reproduce actual test and spiking data must be stored permanently. The format of this data does not need to be interferograms but may be absorbance spectra or single beams.

(c) When using the flow and dilution measurement protocol specified in section 2.2.6 of EPA 430–R–10–003 (incorporated by reference, see § 98.7), you may determine point-of-use abatement device total volume flow with the modifications specified in paragraphs (c)(1) through (3) of this appendix.

(1) You may introduce the non-reactive, non-native gas used for determining total volume flow and dilution across the point-of-use abatement device at a location in the exhaust of the point-of-use abatement device. For abatement systems operating in a mode where specific F–GHG are not readily abated, you may introduce the non-reactive, non-native gas used for determining total volume flow and dilution across the point-of-use abatement device prior to the point-of-use abatement system; in this case, the tracer must be more difficult to destroy than the target compounds being measured based on the thermal stability of the tracer and target.

(2) You may select a location for downstream non-reactive, non-native gas analysis that complies with the requirements in this paragraph (c)(2) of this appendix. The sampling location should be traversed with the sampling probe measuring the non-reactive, non-native gas concentrations to ensure homogeneity of the non-reactive gas and point-of-use abatement device effluent (i.e., stratification test). To test for stratification, measure the non-reactive, non-native gas concentrations at three points on a line passing through the centroidal area. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Sample for a minimum of twice the system response time, determined according to paragraph (c)(3) of this appendix, at each traverse point. Calculate the individual point and mean non-reactive, non-native gas concentrations. If the non-reactive, non-native gas concentration at each traverse point differs from the mean concentration for all traverse points by no more than ±5.0 percent of the mean concentration, the gas stream is considered unstratified and you may collect samples from a single point that most closely matches the mean. If the 5.0 percent criterion is not met, but the concentration at each traverse point differs from the mean concentration for all traverse points by no more than ±10.0 percent of the mean, you may take samples from two points and use the average of the two measurements. Space the two points at 16.7, 50.0, or 83.3 percent of the measurement line. If the concentration at each traverse point differs from the mean concentration for all traverse points by more than ±10.0 percent of the mean but less than 20.0 percent, take samples from three points at 16.7, 50.0, and 83.3 percent of the measurement line and use the average of the three measurements. If the gas stream is found to be stratified because the 20.0 percent criterion for a 3-point test is not met, locate and sample the non-reactive, non-

native gas from traverse points for the test in accordance with Sections 11.2 and 11.3 of EPA Method 1 in 40 CFR part 60, Appendix A–1. A minimum of 40 non-reactive gas concentration measurements will be collected at three to five different injected non-reactive gas flow rates for determination of point-of-use abatement device effluent flow. The total volume flow of the point-of-use abatement device exhaust will be calculated consistent with the EPA 430–R–10–003 (incorporated by reference, see § 98.7) Equations 1 through 7.

(3) You must determine the measurement system response time according to paragraphs (c)(3)(i) through (iii) of this appendix.

(i) Before sampling begins, introduce ambient air at the probe upstream of all sample condition components in system calibration mode. Record the time it takes for the measured concentration of a selected compound (for example, carbon dioxide) to reach steady state.

(ii) Introduce nitrogen in the system calibration mode and record the time required for the concentration of the selected compound to reach steady state.

(iii) Observe the time required to achieve 95 percent of a stable response for both nitrogen and ambient air. The longer interval is the measurement system response time.

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Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008; Technical Amendment to External Review for Multi-State Plan Program; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

[CMS–4140–F]

45 CFR Parts 146 and 147

RIN 0938–AP65

Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008; Technical Amendment to External Review for Multi-State Plan Program

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: Final rules.

SUMMARY: This document contains final rules implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, which requires parity between mental health or substance use disorder benefits and medical/surgical benefits with respect to financial requirements and treatment limitations under group health plans and group and individual health insurance coverage. This document also contains a technical amendment relating to external review with respect to the multi-state plan program administered by the Office of Personnel Management.

DATES: *Effective date.* These final regulations are effective on January 13, 2014, except that the technical amendments to 29 CFR 2590.715–2719 and 45 CFR 147.136 are effective on December 13, 2013.

Applicability date. The mental health parity provisions of these final regulations apply to group health plans and health insurance issuers for plan years (or, in the individual market, policy years) beginning on or after July 1, 2014. Until the final rules become applicable, plans and issuers must continue to comply with the mental health parity provisions of the interim final regulations.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Amber Rivers, 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 (202) 317–5500; 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, including the mental health parity provisions, may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers (such as mental health and substance use disorder parity) can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*www.cms.gov/cciio*) and information on health reform can be found at *www.HealthCare.gov.* In addition, information about mental health is available at *www.mentalhealth.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) was enacted on October 3, 2008 as sections 511 and 512 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Division C of Pub. L. 110–343).[1] MHPAEA amends the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), and the Internal Revenue Code of 1986 (Code). In 1996, Congress enacted the Mental Health Parity Act of 1996 (MHPA 1996), which required parity in aggregate lifetime and annual dollar limits for mental health benefits and medical/surgical benefits. Those mental health parity provisions were codified in section 712 of ERISA, section 2705 of the PHS Act, and section 9812 of the Code, and applied to employment-related group health plans and health insurance coverage offered in connection with a group health plan. The changes made by MHPAEA were codified in these same sections and consist of new requirements, including parity for substance use disorder benefits, as well as amendments to the existing mental health parity provisions. The changes made by MHPAEA are generally effective for plan years beginning after October 3, 2009.

The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, was enacted on March 30, 2010 (collectively, the ''Affordable Care Act''). The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the PHS Act relating to group health plans and health insurance issuers in the group and individual markets. The Affordable Care Act adds section 715(a)(1) to ERISA and section 9815(a)(1) to 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.

The Affordable Care Act extended MHPAEA to apply to the individual health insurance market and redesignated MHPAEA in the PHS Act as section 2726.[2] Additionally, section 1311(j) of the Affordable Care Act applies section 2726 of the PHS Act to qualified health plans (QHPs) in the same manner and to the same extent as such section applies to health insurance issuers and group health plans. Furthermore, the Department of Health and Human Services (HHS) final regulation regarding essential health benefits (EHB) requires health insurance issuers offering non-grandfathered health insurance coverage in the individual and small group markets, through an Affordable Insurance Exchange (Exchange, also called a Health Insurance Marketplace or Marketplace) or outside of an Exchange, to comply with the requirements of the

[1] A technical correction to the effective date for collectively bargained plans was made by Public Law 110–460, enacted on December 23, 2008.

[2] These final regulations apply to both grandfathered and non-grandfathered health plans. *See* section 1251 of the Affordable Care Act and its implementing regulations at 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140. Under section 1251 of the Affordable Care Act, grandfathered health plans are exempted only from certain Affordable Care Act requirements enacted in Subtitles A and C of Title I of the Affordable Care Act. The provisions extending MHPAEA requirements to the individual market and requiring that qualified health plans comply with MHPAEA were not part of these sections.

MHPAEA regulations in order to satisfy the requirement to cover EHB.[3]

On April 28, 2009, the Departments of the Treasury, Labor, and HHS published in the **Federal Register** (74 FR 19155) a request for information (RFI) soliciting comments on the requirements of MHPAEA. (Subsequent references to the ''Departments'' include all three Departments, unless the headings or context indicate otherwise.) On February 2, 2010, after consideration of the comments received in response to the RFI, the Departments published in the **Federal Register** (75 FR 5410) comprehensive interim final regulations implementing MHPAEA (interim final regulations). The interim final regulations generally became applicable to group health plans and group health insurance issuers for plan years beginning on or after July 1, 2010.

The interim final regulations established six classifications of benefits[4] and provided that the parity requirements be applied on a classification-by-classification basis. The general parity requirement set forth in paragraph (c)(2) of the interim final regulations prohibited plans and issuers from imposing a financial requirement or quantitative treatment limitation on mental health and substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in the same classification. For this purpose, the interim final regulations incorporated the two-thirds ''substantially all'' numerical standard from the regulations implementing MHPA 1996, and quantified ''predominant'' to mean that more than one-half of medical/surgical benefits in the classification are subject to the financial requirement or quantitative treatment limitation in the relevant classification. Using these numerical standards, the Departments established a mathematical test by which plans and issuers could determine what level of a financial requirement or quantitative treatment limitation, if any, is the most restrictive level that could be imposed on mental health or substance use disorder benefits within a classification. (This mathematical test is referred to in this preamble as the quantitative parity analysis.)

The interim final regulations also prohibited plans and issuers from applying cumulative financial requirements (such as deductibles or out-of-pocket maximums) or cumulative quantitative treatment limitations (such as annual or lifetime day or visit limits) to mental health or substance use disorder benefits in a classification that accumulate separately from any such cumulative financial requirements or cumulative quantitative treatment limitations established for medical/surgical benefits in the same classification.

Additionally, the interim final regulations set forth parity protections with respect to nonquantitative treatment limitations (NQTLs), which are limits on the scope or duration of treatment that are not expressed numerically (such as medical management techniques like prior authorization). The interim final regulations stated that a plan or issuer may not impose an NQTL with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the same classification, except to the extent that recognized clinically appropriate standards of care may permit a difference. The Departments also set forth a special rule for evaluating parity of multi-tiered prescription drug benefits. The interim final regulations included several examples to illustrate each of these parity standards.

The interim final regulations also implemented MHPAEA's disclosure provisions requiring that the criteria for medical necessity determinations and the reason for any denial of reimbursement or payment under a group health plan (or health insurance coverage) with respect to mental health or substance use disorder benefits be made available upon request in certain circumstances.

The interim final regulations also specifically requested comments in several areas, including whether additional examples would be helpful to illustrate the application of the NQTL rule to other features of medical management or general plan design; whether and to what extent MHPAEA addresses the ''scope of services'' or ''continuum of care'' provided by a group health plan or health insurance coverage; what additional clarifications might be helpful to facilitate compliance with the disclosure requirement for medical necessity criteria or denials of mental health or substance use disorder benefits; and implementing the new statutory requirements for the increased cost exemption under MHPAEA, as well as information on how many plans expect to use the exemption.

In light of the comments and other feedback received in response to the interim final regulations, the Departments issued clarifications in several rounds of Frequently Asked Questions (FAQs). In the first FAQ about MHPAEA, the Departments set forth an enforcement safe harbor under which the Departments would not take enforcement action against plans and issuers that divide benefits furnished on an outpatient basis into two sub-classifications—(1) office visits, and (2) all other outpatient items and services—for purposes of applying the financial requirement and treatment limitation rules under MHPAEA.[5]

The Departments issued additional FAQs providing further clarifications.[6] The FAQs issued in December 2010 addressed the changes made to the definition of ''small employer'' after the enactment of the Affordable Care Act, made clear how the disclosure requirements under MHPAEA interact with other ERISA disclosure requirements (and that health care providers are entitled to request such information on behalf of participants), and provided temporary information on how to claim the increased cost exemption.[7] Additional FAQs issued in November 2011 addressed specific NQTLs, such as prior authorization and concurrent review.[8] The Departments

[3] *See* 45 CFR 147.150 and 156.115 (78 FR 12834, February 25, 2013).

[4] The six classifications of benefits are inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs.

[5] *See* FAQ About Mental Health Parity and Addiction Equity Act, available at *http://www.dol.gov/ebsa/faqs/faq-mhpaea.html*.

[6] *See* FAQs about Affordable Care Act Implementation (Part V) and Mental Health Parity Implementation, available at *http://www.dol.gov/ebsa/faqs/faq-aca5.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs5.html*, and FAQs about Affordable Care Act Implementation (Part VII) and Mental Health Parity Implementation, available at *http://www.dol.gov/ebsa/faqs/faq-aca7.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs7.html#Mental* Health Parity and Addiction Equity Act of 2008.

[7] *See* FAQs about Affordable Care Act Implementation (Part V) and Mental Health Parity Implementation, questions 8–11, available at *http://www.dol.gov/ebsa/faqs/faq-aca5.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs5.html*.

[8] *See* FAQs about Affordable Care Act Implementation (Part VII) and Mental Health Parity Implementation, questions 2–6, available at *http://*

Continued

also clarified that plans and issuers may charge the specialist copayment for mental health and substance use disorder benefits only if it is determined that this level of copayment is the predominant level that applies to substantially all medical/surgical benefits within a classification.[9]

After consideration of the comments and other feedback received from stakeholders, the Departments are publishing these final regulations.

II. Overview of the Regulations

In general, these final regulations incorporate clarifications issued by the Departments through FAQs since the issuance of the interim final regulations, and provide new clarifications on issues such as NQTLs and the increased cost exemption. The HHS final regulation also implements the provisions of MHPAEA for the individual health insurance market.

A. Meaning of Terms

Under MHPAEA and the interim final regulations, the term ''medical/surgical benefits'' means benefits for medical or surgical services, as defined under the terms of the plan or health insurance coverage. This term does not include mental health or substance use disorder benefits. The terms ''mental health benefits'' and ''substance use disorder benefits'' mean benefits with respect to services for mental health conditions or substance use disorders, respectively, as defined under the terms of the plan and in accordance with applicable Federal and State law. The interim final regulations further provided that the plan terms defining whether the benefits are medical/surgical benefits or mental health or substance use disorder benefits must be consistent with generally recognized standards of current medical practice (for example, the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the most current version of the International Classification of Diseases (ICD), or State guidelines).

These final regulations make minor, technical changes to the meaning of these terms for consistency and clarity. Specifically, the final regulations clarify that the definitions of ''medical/surgical benefits,'' ''mental health benefits,'' and ''substance use disorder benefits'' include benefits for items as well as services. The final regulations also clarify that medical conditions and surgical procedures, and mental health conditions and substance use disorders, are defined under the terms of the plan or coverage and in accordance with applicable Federal and State law.

One commenter suggested that the definitions of mental health benefits and substance use disorder benefits should be revised to refer only to the terms of the plan and applicable State law. The Departments decline to adopt this suggestion. The statutory definitions provided in MHPAEA specifically refer to applicable Federal law. Moreover, the reference to Federal law is appropriate because State law does not apply to all group health plans, and Federal law also identifies EHB categories, including the category of mental health and substance use disorder services, that non-grandfathered health plans in the individual and small group markets are required to cover beginning in 2014.

B. Clarifications—Parity Requirements

1. Classification of Benefits

As described earlier in this preamble, the interim final regulations set forth that the parity analysis be conducted on a classification-by-classification basis in six specific classifications of benefits. Subsequent to the issuance of the interim final regulations, several plans and issuers brought to the Departments' attention that, with respect to outpatient benefits, many plans and issuers require a copayment for office visits (such as physician or psychologist visits) and coinsurance for all other outpatient services (such as outpatient surgery). In response to this information, the Departments published an FAQ establishing an enforcement safe harbor under which the Departments would not take enforcement action against plans and issuers that divide benefits furnished on an outpatient basis into two sub-classifications ((1) office visits and (2) all other outpatient items and services) for purposes of applying the financial requirement and treatment limitation rules under MHPAEA.[10]

The Departments have incorporated the terms of the FAQ in paragraph (c)(3)(iii)(C) of these final regulations, permitting sub-classifications for office visits, separate from other outpatient services. Other sub-classifications not specifically permitted in these final regulations, such as separate sub-classifications for generalists and specialists, must not be used for purposes of determining parity. After the sub-classifications are established, a plan or issuer may not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in any sub-classification (*i.e.,* office visits or non-office visits) that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification using the methodology set forth in paragraph (c)(3)(i) of these final regulations. Example 6 under paragraph (c)(3)(iv) of these final regulations illustrates the approach that plans and issuers may employ when dividing outpatient benefits into sub-classifications in accordance with these final regulations.

Additionally, commenters requested that the final regulations permit plans and issuers to create sub-classifications to address plan designs that have two or more network tiers of providers. Commenters asserted that utilizing tiered networks helps plans manage the costs and quality of care and requested that the final regulations allow plans to conduct the parity analysis separately with respect to these various network tiers.

The Departments have considered these comments and recognize that tiered networks have become an important tool for health plan efforts to manage care and control costs. Therefore, for purposes of applying the financial requirement and treatment limitation rules under MHPAEA, these final regulations provide that if a plan (or health insurance coverage) provides in-network benefits through multiple tiers of in-network providers (such as an in-network tier of preferred providers with more generous cost sharing to participants than a separate in-network tier of participating providers), the plan may divide its benefits furnished on an in-network basis into sub-classifications that reflect those network tiers, if the tiering is based on reasonable factors and without regard to whether a provider is a mental health or substance use disorder provider or a medical/surgical provider.[11] After the sub-

www.dol.gov/ebsa/faqs/faq-aca7.html and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs7.html#Mental* Health Parity and Addiction Equity Act of 2008.

[9] *See* FAQs about Affordable Care Act Implementation (Part VII) and Mental Health Parity Implementation, question 7, available at *http://www.dol.gov/ebsa/faqs/faq-aca7.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs7.html#Mental* Health Parity and Addiction Equity Act of 2008.

[10] *See* FAQ About Mental Health Parity and Addiction Equity Act, available at *http://www.dol.gov/ebsa/faqs/faq-mhpaea.html.*

[11] Under PHS Act section 2719A (incorporated into ERISA and the Code) and its implementing regulations, non-grandfathered group health plans and non-grandfathered group or individual health insurance coverage are prohibited from imposing any cost-sharing requirement expressed as a copayment amount or coinsurance rate with respect to a participant or beneficiary for out-of-network emergency services that exceeds the cost-sharing requirement imposed with respect to a participant or beneficiary if the services were provided in-

classifications are established, the plan or issuer may not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification using the methodology set forth in paragraph (c)(3)(i) of these final regulations.

The Departments are aware that some plans may have an uneven number of tiers between medical/surgical providers and mental health or substance use disorder providers (*e.g.,* 3 tiers for medical/surgical providers and 2 tiers for mental health or substance use disorder providers). The Departments may provide additional guidance if questions persist with respect to plans with an uneven number of tiers or if the Departments become aware of tier structures that may be inconsistent with the parity analysis required under these final regulations. Until the issuance of further guidance, the Departments will consider a plan or issuer to comply with the financial requirement and quantitative treatment limitation rules under MHPAEA if a plan or issuer treats the least restrictive level of the financial requirement or quantitative treatment limitation that applies to at least two-thirds of medical/surgical benefits across all provider tiers in a classification as the predominant level that it may apply to mental health or substance use disorder benefits in the same classification.

Some commenters requested clarification that all medical/surgical benefits and mental health or substance use disorder benefits offered by a plan or coverage must be contained within the six classifications of benefits and that plans and issuers could not classify certain benefits outside of the six classifications in order to avoid the parity requirements. Other commenters suggested that specific mental health or substance use disorder benefits be cross-walked or paired with specific medical/surgical benefits (*e.g.,* physical rehabilitation with substance use disorder rehabilitation) for purposes of the parity analysis.

The final regulations retain the six classifications enumerated in the interim final regulations, specify the permissible sub-classifications, and provide that the parity analysis be performed within each classification and sub-classification. The classifications and sub-classifications are intended to be comprehensive and cover the complete range of medical/surgical benefits and mental health or substance use disorder benefits offered by health plans and issuers. Medical/surgical benefits and mental health or substance use disorder benefits cannot be categorized as being offered outside of these classifications and therefore not subject to the parity analysis.

Cross-walking or pairing specific mental health or substance use disorder benefits with specific medical/surgical benefits is a static approach that the Departments do not believe is feasible, given the difficulty in determining ''equivalency'' between specific medical/surgical benefits and specific mental health and substance use disorder benefits and because of the differences in the types of benefits that may be offered by any particular plan.

2. Measuring Plan Benefits

Some commenters supported the ''substantially all'' and ''predominant'' tests as formulated in the interim final regulations, while other commenters were concerned that they were too restrictive and may create an administrative burden on plans. A few commenters requested clarification that the parity analysis would not need to be performed annually absent changes in plan design or indications that assumptions or data were inaccurate.

The interim final regulations incorporated the two-thirds ''substantially all'' numerical standard from the regulations implementing MHPA 1996, and quantified ''predominant'' to mean more than one-half of medical/surgical benefits in the classification are subject to the financial requirement or quantitative treatment limitation. The Departments believe group health plans and issuers have developed the familiarity and expertise to implement these parity requirements and therefore retain the numerical standards as set forth in the interim final regulations. The Departments clarify that a plan or issuer is not required to perform the parity analysis each plan year unless there is a change in plan benefit design, cost-sharing structure, or utilization that would affect a financial requirement or treatment limitation within a classification (or sub-classification).

These final regulations, like the interim final regulations, provide that the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year. Any reasonable method may be used to determine the dollar amount expected to be paid under the plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation. One commenter asked whether plan benefits are measured based on allowed plan costs, for purposes of the ''substantially all'' and ''predominant'' tests. The dollar amount of plan payments is based on the amount the plan allows (before enrollee cost sharing) rather than the amount the plan pays (after enrollee cost sharing) because payment based on the allowed amount covers the full scope of the benefits being provided.

3. Cumulative Financial Requirements and Cumulative Quantitative Treatment Limitations

The interim final regulations provide that a plan or issuer may not apply cumulative financial requirements (such as deductibles and out-of-pocket maximums) or cumulative quantitative treatment limitations (such as annual or lifetime day or visit limits) for mental health or substance use disorder benefits in a classification that accumulate separately from any cumulative requirement or limitation established for medical/surgical benefits in the same classification. These final regulations retain this standard and continue to provide that cumulative requirements and limitations must also satisfy the quantitative parity analysis. Accordingly, these final regulations continue to prohibit plans and issuers from applying separate cumulative financial requirements and cumulative quantitative treatment limitations to medical/surgical and mental health and substance use disorder benefits in a classification, and continue to provide that such cumulative requirements or limitations are only permitted to be applied for mental health and substance use disorder benefits in a classification to the extent that such unified cumulative requirements or limitations also apply to substantially all medical/surgical benefits in the classification.

Several commenters argued that the requirement in the interim final regulations to use a single, combined deductible in a classification was burdensome and would require significant resources to implement, especially for Managed Behavioral Health Organizations (MBHOs) that often work with multiple plans. One commenter asserted that this

network. 26 CFR 54.9815–2719AT(b); 29 CFR 2590.715–2719A(b); 45 CFR 147.138(b).

requirement could impact the willingness of plan sponsors to offer mental health or substance use disorder benefits. A study sponsored by HHS, however, found that nearly all plans had eliminated the use of separate deductibles for mental health and substance use disorder benefits by 2011.[12] According to this study, even in 2010, only a very small percentage of plans were using separate deductibles. This study and other research [13] have shown that the overwhelming majority of plans have retained mental health and substance use disorder coverage after issuance of the interim final regulations and, for the very small percent of plans that have dropped mental health or substance use disorder coverage, there is no clear evidence they did so because of MHPAEA. Accordingly, these final regulations retain the requirement that plans and issuers use a single, combined deductible in a classification.

4. Interaction With PHS Act Section 2711 (No Lifetime or Annual Limits)

MHPA 1996 and paragraph (b) of the interim final regulations set forth the parity requirements with respect to aggregate lifetime and annual dollar limits on mental health benefits or substance use disorder benefits where a group health plan or health insurance coverage provides both medical/surgical benefits and mental health benefits or substance use disorder benefits.

PHS Act section 2711, as added by the Affordable Care Act, prohibits lifetime and annual limits on the dollar amount of EHB, as defined in section 1302(b) of the Affordable Care Act. The definition of EHB includes ''mental health and substance use disorder services, including behavioral health treatment.'' [14] Thus, notwithstanding the provisions of MHPAEA that permit aggregate lifetime and annual dollar limits with respect to mental health or substance use disorder benefits as long as those limits are in accordance with the parity requirements for such limits, such dollar limits are prohibited with respect to mental health or substance use disorder benefits that are covered as EHB. While these final regulations generally retain the provisions of the interim final regulations regarding the application of the parity requirements to aggregate lifetime and annual dollar limits on mental health or substance use disorder benefits, language has been added specifying that these final regulations do not address the requirements of PHS Act section 2711. That is, the parity requirements regarding annual and lifetime limits described in these final regulations only apply to the provision of mental health and substance use disorder benefits that are not EHB. Because this greatly reduces the instances in which annual or lifetime limits will be permissible, the examples from the interim final regulations that expressly demonstrated how a plan could apply lifetime or annual dollar limits have been deleted.[15]

5. Interaction With PHS Act Section 2713 (Coverage of Preventive Health Services)

The interim final regulations provide that if a plan or issuer provides mental health or substance use disorder benefits in any classification, mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided. Under PHS Act section 2713, as added by the Affordable Care Act, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group and individual coverage are required to provide coverage for certain preventive services without cost sharing.[16] These preventive services presently include, among other things, alcohol misuse screening and counseling, depression counseling, and tobacco use screening as provided for in the guidelines issued by the United States Preventive Services Task Force.

The Departments received several comments asking whether or to what extent a non-grandfathered plan that provides mental health or substance use disorder benefits pursuant to PHS Act section 2713 is subject to the requirements of MHPAEA. Many commenters urged the Departments to clarify that the provision of mental health and substance use disorder benefits in this circumstance does not trigger a broader requirement to comply with MHPAEA for non-grandfathered plans that do not otherwise offer mental health or substance use disorder benefits.

The Departments agree that compliance with PHS Act section 2713 should not, for that reason alone, require that the full range of benefits for a mental health condition or substance user disorder be provided under MHPAEA. Accordingly, paragraph (e)(3)(ii) of these final regulations provides that nothing in these regulations requires a group health plan (or health insurance issuer offering coverage in connection with a group health plan) that provides mental health or substance use disorder benefits only to the extent required under PHS Act section 2713 to provide additional mental health or substance use disorder benefits in any classification.

C. Nonquantitative Treatment Limitations

1. Exceptions for Clinically Appropriate Standards of Care

The final regulations generally retain the provision in the interim final regulations setting forth the parity requirements with respect to NQTLs. Under both the interim final regulations and these final regulations, a plan or issuer may not impose an NQTL with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to

[12] Final Report: Consistency of Large Employer and Group Health Plan Benefits with Requirements of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. NORC at the University of Chicago for the Office of the Assistant Secretary for Planning and Evaluation. This study analyzed information on large group health plan benefit designs from 2009 through 2011 in several databases maintained by benefits consulting firms that advise plans on compliance with MHPAEA as well as other requirements.

[13] The 2010 Kaiser Family Foundation/HRET and the 2010 Mercer survey found that fewer than 2% of firms with over 50 employees dropped coverage of mental health or substance use disorder benefits. Final Report: Consistency of Large Employer and Group Health Plan Benefits with Requirements of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. NORC at the University of Chicago for the Office of the Assistant Secretary for Planning and Evaluation, pp. 43–44.

[14] *See* section 1302(b)(1)(E) of the Affordable Care Act.

[15] For self-insured group health plans, large group market health plans, and grandfathered health plans, to determine which benefits are EHB for purposes of complying with PHS Act section 2711, the Departments have stated that they will consider the plan to have used a permissible definition of EHB under section 1302(b) of the Affordable Care Act if the definition is one that is authorized by the Secretary of HHS (including any available benchmark option, supplemented as needed to ensure coverage of all ten statutory categories). Furthermore, the Departments intend to use their enforcement discretion and work with those plans that make a good faith effort to apply an authorized definition of EHB to ensure there are no annual or lifetime dollar limits on EHB. *See* FAQ–10 of Frequently Asked Questions on Essential Health Benefits Bulletin (published February 17, 2012), available at: *http://www.cms.gov/CCIIO/Resources/Files/Downloads/ehb-faq-508.pdf.*

[16] *See* 26 CFR 54.9815–2713T; 29 CFR 2590.715–2713; 45 CFR 147.130.

medical/surgical benefits in the same classification.

The interim final regulations also contained an exception to the NQTL requirements allowing for variation ''to the extent that recognized clinically appropriate standards of care may permit a difference.'' A few commenters expressed support for the exception, emphasizing inherent differences in treatment for medical/surgical conditions and mental health conditions and substance use disorders. Many other commenters raised concerns that this exception could be subject to abuse and recommended the Departments set clear standards for what constitutes a ''recognized clinically appropriate standard of care.'' For example, commenters suggested a recognized clinically appropriate standard of care must reflect input from multiple stakeholders and experts; be accepted by multiple nationally recognized provider, consumer, or accrediting organizations; be based on independent scientific evidence; and not be developed solely by a plan or issuer. Additionally, since publication of the interim final regulations, some plans and issuers may have attempted to invoke the exception to justify applying an NQTL to all mental health or substance use disorder benefits in a classification, while only applying the NQTL to a limited number of medical/surgical benefits in the same classification. These plans and issuers generally argue that fundamental differences in treatment of mental health and substance use disorders and medical/surgical conditions, justify applying stricter NQTLs to mental health or substance use disorder benefits than to medical/surgical benefits under the exception in the interim final regulations.

In consideration of these comments, the Departments are removing the specific exception for ''recognized clinically appropriate standards of care.'' [17] Plans and issuers will continue to have the flexibility contained in the NQTL requirements to take into account clinically appropriate standards of care when determining whether and to what extent medical management techniques and other NQTLs apply to medical/surgical benefits and mental health and substance use disorder benefits, as long as the processes, strategies, evidentiary standards, and other factors used in applying an NQTL to mental health and substance use disorder benefits are comparable to, and applied no more stringently than, those with respect to medical/surgical benefits. In particular, the regulations do not require plans and issuers to use the same NQTLs for both mental health and substance use disorder benefits and medical/surgical benefits, but rather that the processes, strategies, evidentiary standards, and other factors used by the plan or issuer to determine whether and to what extent a benefit is subject to an NQTL are comparable to and applied no more stringently for mental health or substance use disorder benefits than for medical/surgical benefits. Disparate results alone do not mean that the NQTLs in use do not comply with these requirements. The final regulations provide examples of how health plans and issuers can comply with the NQTL requirements absent the exception for a recognized clinically appropriate standard of care.

However, MHPAEA specifically prohibits separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits. Moreover, as reflected in FAQs [18] released in November 2011, it is unlikely that a reasonable application of the NQTL requirement would result in all mental health or substance use disorder benefits being subject to an NQTL in the same classification in which less than all medical/surgical benefits are subject to the NQTL.

2. Parity Standards for NQTLs Versus Quantitative Treatment Limitations

As mentioned earlier in this preamble, MHPAEA and the interim final regulations prohibit plans and issuers from imposing a financial requirement or quantitative treatment limitation on mental health and substance use disorder benefits that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in the same classification. The interim final regulations incorporated the two-thirds ''substantially all'' numerical standard from the rules implementing the requirements of MHPA 1996, and quantified ''predominant'' to mean more than one-half. Using these numerical standards, the Departments established a mathematical test by which plans and issuers could determine what level of a financial requirement or quantitative treatment limitation, if any, is the most restrictive level that could be imposed on mental health or substance use disorder benefits within a classification.

The Departments recognized that plans and issuers impose a variety of NQTLs affecting the scope or duration of benefits that are not expressed numerically. Some commenters recommended that the Departments adopt the same quantitative parity analysis for NQTLs. While NQTLs are subject to the parity requirements, the Departments understood that such limitations cannot be evaluated mathematically. These final regulations continue to provide different parity standards with respect to quantitative treatment limitations and NQTLs, because although both kinds of limitations operate to limit the scope or duration of mental health and substance use disorder benefits, they apply to such benefits differently.[19]

3. Clarification Regarding the Application of Certain NQTLs

Under the interim final regulations, the Departments set forth the parity requirement with respect to NQTLs and provided an illustrative list of NQTLs that plans and issuers commonly use. These NQTLs included: medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative; formulary design for prescription drugs; standards for provider admission to participate in a network, including reimbursement rates; plan methods for determining usual, customary, and reasonable charges; refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols); and exclusions based on failure to complete a course of treatment. The interim final regulations also included examples illustrating the operation of the requirements for NQTLs.

After the interim final regulations were issued, some stakeholders asked questions regarding the application of

[17] HHS convened a technical expert panel on March 3, 2011 to provide input on the use of NQTLs for mental health and substance use disorder benefits. The panel was comprised of individuals with clinical expertise in mental health and substance use disorder treatment as well as general medical treatment. These experts were unable to identify situations for which the clinically appropriate standard of care exception was warranted—in part because of the flexibility inherent in the NQTL standard itself.

[18] *See* FAQs About Affordable Care Act Implementation (Part VII) and Mental Health Parity Implementation, question 5, available at: *http://www.dol.gov/ebsa/faqs/faq-aca7.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs7.html*.

[19] The Departments reiterated the different parity standards with respect to quantitative treatment limitations and nonquantitative treatment limitations in an FAQ. *See* FAQs on Understanding Implementation of the Mental Health Parity and Addiction Equity Act of 2008, question 6, available at *http://www.dol.gov/ebsa/faqs/faq-mhpaeaimplementation.html*.

the NQTL rule to other features of medical management or general plan design not specifically addressed in the interim final regulations. Many commenters requested that the Departments address additional NQTLs, such as prior authorization and concurrent review, service coding, provider network criteria, policy coverage conditions, and both in- and out-of-network limitations.

These final regulations make clear that, while an illustrative list is included in these final regulations, all NQTLs imposed on mental health and substance use disorder benefits by plans and issuers subject to MHPAEA are required to be applied in accordance with these requirements. To the extent that a plan standard operates to limit the scope or duration of treatment with respect to mental health or substance use disorder benefits, the processes, strategies, evidentiary standards, or other factors used to apply the standard must be comparable to, and applied no more stringently than, those imposed with respect to medical/surgical benefits. By being comparable, the processes, strategies, evidentiary standards and other factors cannot be specifically designed to restrict access to mental health or substance use disorder benefits. Specifically, plan standards, such as in- and out-of-network geographic limitations, limitations on inpatient services for situations where the participant is a threat to self or others, exclusions for court-ordered and involuntary holds, experimental treatment limitations, service coding, exclusions for services provided by clinical social workers, and network adequacy, while not specifically enumerated in the illustrative list of NQTLs, must be applied in a manner that complies with these final regulations. In response to the comments received, in paragraph (c)(4)(ii) of these final regulations, the Departments added two additional examples of NQTLs to the illustrative list: network tier design and restrictions based on geographic location, facility type, provider specialty and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage. Furthermore, the Departments included additional and revised examples on how NQTLs, enumerated in these final regulations or otherwise, may be applied in accordance with the requirements of these final regulations.

The Departments are aware that some commenters have asked how the NQTL requirements apply to provider reimbursement rates. Plans and issuers may consider a wide array of factors in determining provider reimbursement rates for both medical/surgical services and mental health and substance use disorder services, such as service type; geographic market; demand for services; supply of providers; provider practice size; Medicare reimbursement rates; and training, experience and licensure of providers. The NQTL provisions require that these or other factors be applied comparably to and no more stringently than those applied with respect to medical/surgical services. Again, disparate results alone do not mean that the NQTLs in use fail to comply with these requirements. The Departments may provide additional guidance if questions persist with respect to provider reimbursement rates.

Some commenters requested that the Departments require plans and issuers to comply with certain guidelines, independent national or international standards, or State government guidelines. While plans and issuers are not required under these final regulations to comply with any such guidelines or standards with respect to the development of their NQTLs, these standards, such as the behavioral health accreditation standards set forth by the National Committee for Quality Assurance or the standards for implementing parity in managed care set forth by URAC, may be used as references and best practices in implementing NQTLs, if they are applied in a manner that complies with these final regulations.

D. Scope of Services

In response to the RFI and interim final regulations, the Departments received many comments addressing an issue characterized as ''scope of services'' or ''continuum of care.'' Scope of services generally refers to the types of treatment and treatment settings that are covered by a group health plan or health insurance coverage. Some commenters requested that, with respect to a mental health condition or substance use disorder that is otherwise covered, the regulations clarify that a plan or issuer is not required to provide benefits for any particular treatment or treatment setting (such as counseling or non-hospital residential treatment) if benefits for the treatment or treatment setting are not provided for medical/surgical conditions. Other commenters requested that the regulations require plans and issuers to provide benefits for the full scope of medically appropriate services to treat a mental health condition or substance use disorder if the plan or issuer covers the full scope of medically appropriate services to treat medical/surgical conditions, even if some treatments or treatment settings are not otherwise covered by the plan or coverage. Other commenters requested that MHPAEA be interpreted to require that group health plans and issuers provide benefits for any evidence-based treatment.

The interim final regulations established six broad classifications that in part define the scope of services under MHPAEA. The interim final regulations require that, if a plan or issuer provides coverage for mental health or substance use disorder benefits in any classification, mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided. The interim final regulations did not, however, address the scope of services that must be covered within those classifications. The Departments invited comments on whether and to what extent the final regulations should address the scope of services or continuum of care provided by a group health plan or health insurance coverage.

Many commenters requested that the Departments clarify how MHPAEA affects the scope of coverage for intermediate services (such as residential treatment, partial hospitalization, and intensive outpatient treatment) and how these services fit within the six classifications set forth by the interim final regulations. Some commenters suggested that the final regulations establish what intermediate mental health and substance use disorder services would be analogous to various intermediate medical/surgical services for purposes of the MHPAEA parity analysis. Other commenters suggested that the Departments not address scope of services in the final regulations.

The Departments did not intend that plans and issuers could exclude intermediate levels of care covered under the plan from MHPAEA's parity requirements. At the same time, the Departments did not intend to impose a benefit mandate through the parity requirement that could require greater benefits for mental health conditions and substance use disorders than for medical/surgical conditions. In addition, the Departments' approach defers to States to define the package of insurance benefits that must be provided in a State through EHB.[20]

Although the interim final regulations did not define the scope of the six classifications of benefits, they directed that plans and issuers assign mental

[20] *See* 45 CFR 147.150 and 156.115 (78 FR 12834, February 25, 2013).

health and substance use disorder benefits and medical/surgical benefits to these classifications in a consistent manner. This general rule also applies to intermediate services provided under the plan or coverage. Plans and issuers must assign covered intermediate mental health and substance use disorder benefits to the existing six benefit classifications in the same way that they assign comparable intermediate medical/surgical benefits to these classifications. For example, if a plan or issuer classifies care in skilled nursing facilities or rehabilitation hospitals as inpatient benefits, then the plan or issuer must likewise treat any covered care in residential treatment facilities for mental health or substance user disorders as an inpatient benefit. In addition, if a plan or issuer treats home health care as an outpatient benefit, then any covered intensive outpatient mental health or substance use disorder services and partial hospitalization must be considered outpatient benefits as well.

These final regulations also include additional examples illustrating the application of the NQTL rules to plan exclusions affecting the scope of services provided under the plan. The new examples clarify that plan or coverage restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services must comply with the NQTL parity standard under these final regulations.

E. Disclosure of Underlying Processes and Standards

MHPAEA requires that the criteria for plan medical necessity determinations with respect to mental health or substance use disorder benefits (or health insurance coverage offered in connection with the plan with respect to such benefits) be made available by the plan administrator (or the health insurance issuer offering such coverage) to any current or potential participant, beneficiary, or contracting provider upon request in accordance with regulations. MHPAEA also requires that the reason for any denial under the plan (or coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available on request or as otherwise required by the plan administrator (or health insurance issuer) to the participant or beneficiary in accordance with regulations.

Several commenters expressed concern about the lack of health plan transparency, or made recommendations to improve transparency, including a request that plans and issuers be required to provide sufficient information to determine whether a plan is applying medical necessity criteria and other factors comparably to medical/surgical benefits and mental health and substance use disorder benefits. In addition, since the issuance of the interim final regulations, stakeholders have expressed concern that it is difficult to understand whether a plan complies with the NQTL provisions without information showing that the processes, strategies, evidentiary standards, and other factors used in applying an NQTL to mental health or substance use disorder benefits and medical/surgical benefits are comparable, impairing plan participants' means of ensuring compliance with MHPAEA.

In response to these concerns, the Departments published several FAQs clarifying the breadth of disclosure requirements applicable to group health plans and health insurance issuers under both MHPAEA and other applicable law, including ERISA and the Affordable Care Act.[21] The substance of these FAQs is included in new paragraph (d)(3) of the final regulations, which reminds plans, issuers, and individuals that compliance with MHPAEA's disclosure requirements is not determinative of compliance with any other provision of applicable Federal or State law. In particular, in addition to MHPAEA's disclosure requirements, provisions of other applicable law require disclosure of information relevant to medical/surgical, mental health, and substance use disorder benefits. For example, ERISA section 104 and the Department of Labor's implementing regulations[22] provide that, for plans subject to ERISA, instruments under which the plan is established or operated must generally be furnished by the plan administrator to plan participants[23] within 30 days of request. Instruments under which the plan is established or operated include documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply an NQTL with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan.

In addition, the Department of Labor's claims procedure regulations (applicable to ERISA plans), as well as the Departments' claims and appeals regulations under the Affordable Care Act (applicable to all non-grandfathered group health plans and health insurance issuers in the group and individual markets),[24] set forth rules regarding claims and appeals, including the right of claimants (or their authorized representative) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided by the plan or issuer, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits.[25] In addition, the plan or issuer must provide the claimant with any new or additional evidence considered, relied upon, or generated by the plan or issuer (or at the direction of the plan or issuer) in connection with a claim. If the plan or issuer is issuing an adverse benefit determination on review based on a new or additional rationale, the claimant must be provided, free of charge, with the rationale. Such evidence or rationale must be provided as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination on

[21] *See* FAQs for Employees about the Mental Health Parity and Addiction Equity Act, available at *http://www.dol.gov/ebsa/faqs/faq-mhpaea2.html;* FAQs about Affordable Care Act Implementation (Part V) and Mental Health Parity Implementation, available at *http://www.dol.gov/ebsa/faqs/faq-aca5.html and http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs5.html.*

[22] 29 CFR 2520.104b 1.

[23] ERISA section 3(7) defines the term ''participant'' to include any employee or former employee who is or may become eligible to receive a benefit of any type from an employee benefit plan or whose beneficiaries may become eligible to receive any such benefit. Accordingly, employees who are not enrolled but are, for example, in a waiting period for coverage, or who are otherwise shopping amongst benefit package options at open season, generally are considered plan participants for this purpose.

[24] 29 CFR 2560.503–1. *See also* 26 CFR 54.9815–2719T(b)(2)(i), 29 CFR 2590.715–2719(b)(2)(i), and 45 CFR 147.136(b)(2)(i), requiring non-grandfathered plans and issuers to incorporate the internal claims and appeals processes set forth in 29 CFR 2560.503–1.

[25] *See* 29 CFR 2560.503–1. The Department of Labor's claim procedure regulation stipulates specific timeframes in which a plan administrator must notify a claimant of the plan's benefit determination, which includes, in the case of an adverse benefit determination, the reason for the denial. Accordingly, a plan administrator must notify a claimant of the plan's benefit determination with respect to a pre-service claim within a reasonable time period appropriate to the medical circumstances, but not later than 15 days after the receipt of the claim. With respect to post-service claims, a plan administrator must notify the claimant within a reasonable time period, but not later than 30 days after the receipt of the claim. In the case of an urgent care claim, a plan administrator must notify the claimant of the plan's benefit determination, as soon as possible, taking into account the medical exigencies, but not later than 72 hours after the receipt of the claimant's request.

review is required to be provided to give the claimant a reasonable opportunity to respond prior to that date.[26] The information required to be provided under these provisions includes documents of a comparable nature with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply an NQTL with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan.

Even with these important disclosure requirements under existing law,[27] the Departments remain focused on transparency and whether individuals have the necessary information to compare NQTLs of medical/surgical benefits and mental health or substance use disorder benefits under the plan to effectively ensure compliance with MHPAEA. Accordingly, contemporaneous with the publication of these final regulations, the Departments of Labor and HHS are also publishing another set of MHPAEA FAQs, which, among other things, solicit comments on whether and how to ensure greater transparency and compliance. [28]

F. Small Employer Exemption

Paragraph (f) of these final regulations implements the exemption for a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer. Prior to the Affordable Care Act, MHPAEA defined a small employer, in connection with a group health plan with respect to a calendar year and a plan year, as an employer who employed an average of not more than 50 employees on business days during the preceding calendar year.

Section 2791 of the PHS Act was amended by the Affordable Care Act to define a small employer as one that has 100 or fewer employees, while also providing States the option to use 50 employees rather than 100 for 2014 and 2015.[29] This definition is incorporated by reference in the MHPAEA provisions contained in section 2726 of the PHS Act. However, the MHPAEA provisions codified in ERISA section 712 and Code section 9812, together with section 732(a) of ERISA and section 8931(a) of the Code, continue to define an exempt small employer as one that has 50 or fewer employees. The Departments issued an FAQ [30] in December 2010 stating that, ''for group health plans and health insurance issuers subject to ERISA and the Code, the Departments will continue to treat group health plans of employers with 50 or fewer employees as exempt from the MHPAEA requirements under the small employer exemption, regardless of any State insurance law definition of small employer.'' The FAQ also acknowledged that, for non-Federal governmental plans, which are not subject to ERISA or the Code, the PHS Act was amended to define a small employer as one that has 100 or fewer employees. Consistent with the FAQs, the Department of Labor and the Department of the Treasury final regulations continue to exempt group health plans and group health insurance coverage of employers with 50 or fewer employees from MHPAEA. The HHS final regulations, which generally apply to non-Federal governmental plans, exempt group health plans and group health insurance coverage of employers with 100 or fewer employees (subject to State law flexibility for 2014 and 2015). Despite this difference, and certain other differences, in the applicability of the provisions of the Code, ERISA, and the PHS Act, the Departments do not find there to be a conflict in that no entity will be put in a position in which compliance with all of the provisions applicable to that entity is impossible.

At the same time, plans and issuers providing coverage in connection with group health plans sponsored by small employers should be aware that, on February 25, 2013, HHS published a final regulation on EHB [31] that requires issuers of non-grandfathered plans in the individual and small group markets to ensure that such plans provide all EHB, including mental health and substance use disorder benefits. The extent of the coverage of EHB is determined based on benchmark plans that are selected by the States. Furthermore, the EHB final regulation at 45 CFR 156.115(a)(3) requires issuers providing EHB to provide mental health and substance use disorder benefits in compliance with the requirements of the MHPAEA regulations, even where those requirements would not otherwise apply directly. Thus, all insured, non-grandfathered, small group plans must cover EHB in compliance with the MHPAEA regulations, regardless of MHPAEA's small employer exemption. (Also, as discussed in section H.1. below, MHPAEA was amended to include individual health insurance coverage. Accordingly, both grandfathered and non-grandfathered coverage in the individual market must comply with MHPAEA.)

G. Increased Cost Exemption

MHPAEA contains an increased cost exemption that is available for plans and health insurance issuers that make changes to comply with the law and incur an increased cost of at least two percent in the first year that MHPAEA applies to the plan or coverage or at least one percent in any subsequent plan or policy year. Under MHPAEA, plans or coverage that comply with the parity requirements for one full plan year and that satisfy the conditions for the increased cost exemption are exempt from the parity requirements for the following plan or policy year, and the exemption lasts for one plan or policy year. Thus, the increased cost exemption may only be claimed for alternating plan or policy years.[32]

The interim final regulations reserved paragraph (g) regarding the increased cost exemption and solicited comments. The Departments issued guidance establishing an interim enforcement safe harbor under which a plan that has incurred an increased cost of two percent during its first year of compliance can obtain an exemption for the second plan year by following the exemption procedures described in the Departments' 1997 regulations implementing MHPA 1996,[33] except that, as required under MHPAEA, for

[26] *See* 26 CFR 54.9815–2719T(b)(2)(ii)(C), 29 CFR 2590.715–2719(b)(2)(ii)(C), and 45 CFR 147.136(b)(2)(ii)(C).

[27] For other disclosure requirements that may be applicable to plans and issuers under existing Federal law, including disclosure requirements regarding prescription drug formulary coverage, *see* the summary plan description requirements for ERISA plans under 29 CFR 2520.102–3(j)(2) and (j)(3) and the preamble discussion at 65 FR 70226, 70237 (Nov. 11, 2000), as well as Department of Labor Advisory Opinion 96–14A (available at *http://www.dol.gov/ebsa/programs/ori/advisory96/96-14a.htm).* See also the summary of benefits and coverage requirements under 26 CFR 54.9815–2715(a)(2)(i)(K), 29 CFR 2590.715–2715(a)(2)i)(K), and 45 CFR 147.200(a)(2)(i)(K).

[28] Available at *http://www.dol.gov/ebsa/healthreform/* and *http://www.cms.gov/cciio/Resources/Fact-Sheets-and-FAQs/index.html.*

[29] *See* section 1304(b)(3) of the Affordable Care Act.

[30] *See* FAQs about Affordable Care Act Implementation (Part V) and Mental Health Parity Implementation, question 8, available at *http://www.dol.gov/ebsa/faqs/faq-aca5.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs5.html.*

[31] 78 FR 12834.

[32] An employer or issuer may elect to continue to provide mental health and substance use disorder benefits in compliance with this section with respect to the plan or coverage involved regardless of any increase in total costs. That is, mere eligibility for the exemption does not require an employer or issuer to use it. An exempt plan or coverage can continue to provide mental health and substance use disorder benefits during the exemption period in compliance with some, all, or none of the parity provisions.

[33] 62 FR 66932, December 22, 1997.

the first year of compliance the applicable percentage of increased cost is two percent and the exemption lasts only one year.[34]

The Departments received several comments on the interim final regulations that requested guidance on attribution of cost increases to MHPAEA. Some commenters emphasized that the cost exemption must be based on actual total plan costs measured at the end of the plan year. Other commenters stated that plans should be permitted to estimate claims that have not yet been reported for purposes of calculating incurred expenditures. Additionally, some commenters stated that a plan's costs for purposes of the increased cost exemption should include not only claims costs, but also administrative expenses associated with complying with the parity requirements.

Paragraph (g) of these final regulations generally applies standards and procedures for claiming an increased cost exemption under MHPAEA consistent with MHPAEA's statutory standards and procedures as well as prior procedures set forth in the Departments' regulations implementing MHPA 1996. The test for an exemption must be based on the estimated increase in actual costs incurred by the plan or issuer that is directly attributable to expansion of coverage due to the requirements of this section and not otherwise due to occurring trends in utilization and prices, a random change in claims experience that is unlikely to persist, or seasonal variation commonly experienced in claims submission and payment patterns.

Under the final regulations, the increase in actual total costs attributable to MHPAEA is described by the formula $[(E_1 - E_0)/T_0] - D > k$, where E represents the level of health plan spending with respect to mental health and substance use disorder benefits over the measurement period, T is a measure of total actual costs incurred by a plan or coverage on all benefits (medical/surgical benefits and mental health and substance use disorder benefits under the plan), D is the average change in spending over the prior five years, and k is the applicable percentage of increased cost for qualifying for the cost exemption (i.e., one percent or two percent depending on the year). k will be expressed as a fraction for the purposes of this formula. The subscripts 1 and 0 refer to a base period and the most recent benefit period preceding the base period, respectively. Costs incurred under E include paid claims by the plan or coverage for services to treat mental health conditions and substance use disorders, and administrative costs associated with providing mental health or substance use disorder benefits (amortized over time).

In estimating the costs attributable to MHPAEA, a plan or issuer must rely on actual claims or encounter data incurred in the benefit period reported within 90 days of the end of the benefit period. Although MHPAEA specifies that determinations with regard to the cost exemption shall be made after a plan has complied with the law for six months of the plan year involved, the provision does not require that the benefit period used to make this calculation be limited to six months. Data from a six month period will not typically reflect seasonal variation in claims experience. To estimate $E_1 - E_0$, a plan or coverage must first calculate secular trends over five years in the volume of services and the prices paid for services for the major classifications of services by applying the formula $(E_1 - E_0)/T_0$ to mental health and substance use disorder spending to each of the five prior years and then calculating the average change in spending. The components of spending are estimated because secular trends can occur in prices and volume. After the average change in spending across the five years is calculated for each service type, the change in mental health and substance use disorder benefits spending attributable to MHPAEA is calculated net of the average annual spending growth that is due to a secular trend. This change in calculation is the main difference from the previous methodology used under prior guidance. It is recognized that for some smaller employers covered by MHPAEA, year to year spending may be somewhat unstable. In this case, an employer or issuer may propose an alternative estimation method. It is important to note that the language of the statute indicates that the base period against which the impact of MHPAEA is assessed moves up each year to the year prior to the current benefit year.

Administrative costs attributable to the implementation of MHPAEA must be reasonable and supported with detailed documentation from accounting records. Software and computing expenses associated with implementation of the prohibition on separate cumulative financial requirements or other provisions of the regulation should be based on a straight-line depreciation over the estimated useful life of the asset (computer hardware five years; software three years, according to the American Hospital Association's Estimated Useful Life of depreciable Hospital Assets). Any other fixed administrative costs should also be amortized.

Some commenters suggested additional clarifications regarding the statutory provision that determinations as to increases in actual costs must be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. Some commenters suggested that the actuary must be qualified to perform such work based on meeting the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States. Other commenters suggested that the actuary must be independent and not employed by the group health plan or health insurance issuer claiming the exemption. The Departments believe the statutory language is sufficient to ensure reliable cost increase determinations. Moreover, this approach is consistent with the approach applicable to EHB in that the only qualification required for actuaries is that they be a member in good standing of the American Academy of Actuaries.[35] Accordingly, the Departments decline to adopt these suggestions. Determinations as to increases in actual costs attributable to implementation of the requirements of MHPAEA must be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. All such determinations must be based on the formula specified in these final regulations in a written report prepared by the actuary. Additionally, the written report, along with all supporting documentation relied upon by the actuary, must be maintained by the group health plan or health insurance issuer for a period of six years.

Several commenters expressed concern regarding the administrative burden that would result from qualifying for the increased cost exemption for one year and then having to comply with the law the following year. MHPAEA's statutory language specifies that plans and issuers may qualify for the increased cost exemption for only one year at a time, stating that if the application of MHPAEA ''results in an increase for the plan year involved of the actual total costs of coverage . . . by an amount that exceeds the applicable percentage . . . the

[34] *See* FAQs about Affordable Care Act Implementation (Part V) and Mental Health Parity Implementation, question 11, available at: *http://www.dol.gov/ebsa/faqs/faq-aca5.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs5.html.*

[35] *See* 45 CFR 156.135(b).

provisions of this section shall not apply to such plan (or coverage) during the following plan year, and such exemption shall apply to the plan (or coverage) for 1 plan year.'' [36]

Before a group health plan or health insurance issuer may claim the increased cost exemption, it must furnish a notice of the plan's exemption from the parity requirements to participants and beneficiaries covered under the plan, the Departments (as described below), and appropriate State agencies. The notification requirements for the increased cost exemption under these final regulations are consistent with the requirements under the Departments' 1997 regulations implementing MHPA 1996.

With respect to participants and beneficiaries, a group health plan subject to ERISA may satisfy this requirement by providing a summary of material reductions in covered services or benefits under 29 CFR 2520.104b–3(d), if it includes all the information required by these final regulations.

With respect to notification to the Departments, a plan or issuer must furnish a notice that satisfies the requirements of these final regulations. A group health plan that is a church plan (as defined in section 414(e) of the Code) must notify the Department of the Treasury. A group health plan subject to Part 7 of Subtitle B of Title I of ERISA must notify the Department of Labor. A group health plan that is a non-Federal governmental plan or a health insurance issuer must notify HHS. In all cases, the exemption is not effective until 30 days after notice has been sent to both participants and beneficiaries and to the appropriate Federal agency. The Departments will designate addresses for delivery of these notices in future guidance.

Finally, a plan or issuer must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based. For purposes of this paragraph (g), an individual who is not a participant or beneficiary and who presents a notice described in paragraph (g)(6) of the final regulations is considered to be a representative. Such a representative may request the summary of information by providing the plan a copy of the notice provided to the participant or beneficiary with any personally identifiable information redacted. The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with parity, and the administrative expenses attributable to complying with the parity requirements. In no event should a summary of information include individually identifiable information.

The increased cost exemption provision in paragraph (g) of these final regulations is effective for plan or policy years beginning on or after July 1, 2014 (see paragraph (i) of these final regulations), which for calendar year plans means the provisions apply on January 1, 2015. Accordingly, plans and issuers must use the formula specified in paragraph (g) of these final regulations to determine whether they qualify for the increased cost exemption in plan or policy years beginning on or after July 1, 2014. For claiming the increased cost exemption in plan or policy years beginning before July 1, 2014, plans and issuers should follow the interim enforcement safe harbor outlined in previously issued FAQs.[37]

H. General Applicability Provisions and Application to Certain Types of Plans and Coverage

The interim final regulations combined in paragraph (e)(1) what had been separate rules under MHPA 1996 for (1) determining if a plan provides both medical/surgical and mental health or substance use disorder benefits; (2) applying the parity requirements on a benefit-package-by-benefit-package basis; and (3) counting the number of plans that an employer or employee organization maintains. The combined rule provides that (1) the parity requirements apply to a group health plan offering both medical/surgical benefits and mental health or substance use disorder benefits, (2) the parity requirements apply separately with respect to each combination of medical/surgical coverage and mental health or substance use disorder coverage that any participant (or beneficiary) can simultaneously receive from an employer's or employee organization's arrangement or arrangements to provide medical care benefits, and (3) all such combinations constitute a single group health plan for purposes of the parity requirements. Some comments expressed concern that the new combined rule would disrupt benefit programs that employers have maintained as separate plans for important reasons having nothing to do with a desire to escape the parity requirements and that the rule should be rescinded or issued only in proposed form. Other comments welcomed the rule as an important protection to prevent evasion of the parity requirements. The final regulations do not change the combined rule from the interim final regulations. In the Departments' view, the combined rule is necessary to prevent potential evasion of the parity requirements by allocating mental health or substance use disorder benefits to a plan or benefit package without medical/surgical benefits (when medical/surgical benefits are also otherwise available).

The preamble to the interim final regulations illustrated how the parity requirements would apply to various benefit package configurations, including multiple medical/surgical benefit packages combined with a single mental health and substance use disorder benefit package. One commenter asked for clarification in the case of a plan with an HMO option and a PPO option in which mental health and substance use disorder benefits are an integral part of each option. In such a case, the parity requirements apply separately to the HMO option and the PPO option.

The Departments are aware that employers and health insurance issuers sometimes contract with MBHOs or similar entities to provide or administer mental health or substance use disorder benefits in group health plans or in health insurance coverage. The fact that an employer or issuer contracts with one or more entities to provide or administer mental health or substance use disorder benefits does not, however, relieve the employer, issuer, or both of their obligations under MHPAEA. The coverage as a whole must still comply with the applicable provisions of MHPAEA, and the responsibility for compliance rests on the group health plan and/or the health insurance issuer, depending on whether the coverage is insured or self-insured. This means that the plan or issuer will need to provide sufficient information in terms of plan structure and benefits to the MBHO to ensure that the mental health and substance use disorder benefits are coordinated with the medical/surgical benefits for purposes of compliance with the requirements of MHPAEA. Liability for any violation of MHPAEA rests with the group health plan and/or health insurance issuer.

Several commenters requested clarification about whether a plan or issuer may exclude coverage for specific

[36] Code section 9812(c)(2), ERISA 712(c)(2), PHS Act section 2726(c)(2).

[37] *See* FAQs about Affordable Care Act Implementation (Part V) and Mental Health Parity Implementation, question 11, available at: *http://www.dol.gov/ebsa/faqs/faq-aca5.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs5.html.*

diagnoses or conditions under MHPAEA. These final regulations continue to provide that nothing in these regulations requires a plan or issuer to provide any mental health benefits or substance use disorder benefits. Moreover, the provision of benefits for one or more mental health conditions or substance use disorders does not require the provision of benefits for any other condition or disorder. Other Federal and State laws may prohibit the exclusion of particular disorders from coverage where applicable, such as the Americans with Disabilities Act. Other Federal and State laws may also require coverage of mental health or substance use disorder benefits, including the EHB requirements under section 2707 of the PHS Act and section 1302(a) of the Affordable Care Act.

1. Individual Health Insurance Market

Section 1563(c)(4) of the Affordable Care Act [38] amended section 2726 of the PHS Act to apply MHPAEA to health insurance issuers in the individual health insurance market. These changes are effective for policy years beginning on or after January 1, 2014. The HHS final regulation implements these requirements in new section 147.160 of title 45 of the Code of Federal Regulations. Under these provisions, unless otherwise specified, the parity requirements outlined in 45 CFR 146.136 of these final regulations apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner and to the same extent as such provisions apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the large group market. These provisions apply to both grandfathered and non-grandfathered individual health insurance coverage for policy years beginning on or after the applicability dates set forth in paragraph (i) of these final regulations.

2. Non-Federal Governmental Plans

Prior to enactment of the Affordable Care Act, sponsors of self-funded, non-Federal governmental plans were permitted to elect to exempt those plans from (''opt out of'') certain provisions of title XXVII of the PHS Act. This election was authorized under section 2721(b)(2) of the PHS Act (renumbered as section 2722(a)(2) by the Affordable Care Act). The Affordable Care Act made a number of changes, with the result that sponsors of self-funded, non-Federal governmental plans can no longer opt out of as many requirements of title XXVII of the PHS Act. However, under the PHS Act, sponsors of self-funded, non-Federal governmental plans may continue to opt out of the requirements of MHPAEA.[39] If the sponsor of a self-funded, non-Federal governmental plan wishes to exempt its plan from the requirements of MHPAEA, it must follow the procedures and requirements outlined in section 2722 and corresponding Centers for Medicare & Medicaid Services (CMS) guidance, which includes notifying CMS to that effect in writing.[40]

3. Retiree-Only Plans

Some commenters requested clarification regarding the applicability of these final regulations to retiree-only plans. ERISA section 732(a) generally provides that part 7 of ERISA—and Code section 9831(a) generally provides that chapter 100 of the Code—does not apply to group health plans with less than two participants who are current employees (including retiree-only plans that, by definition, cover less than two participants who are current employees).[41] The Departments previously clarified in FAQs that the exceptions of ERISA section 732 and Code section 9831, including the exception for retiree-only health plans, remain in effect.[42] Since the provisions of MHPAEA contained in ERISA section 712 and Code section 9812 are contained in part 7 of ERISA and chapter 100 of the Code, respectively, group health plans that do not cover at least two employees who are current employees (such as plans in which only retirees participate) are exempt from the requirements of MHPAEA and these final regulations.[43]

4. Employee Assistance Programs

Several comments also requested clarification regarding the applicability of the parity requirements to employee assistance programs (EAPs). An example in the interim final regulations clarified that a plan or issuer that limits eligibility for mental health and substance use disorder benefits until after benefits under an EAP are exhausted has established an NQTL subject to the parity requirements, and stated that if no comparable requirement applies to medical/surgical benefits, such a requirement could not be applied to mental health or substance use disorder benefits.[44] The final regulations retain this example and approach.[45]

The Departments have also received questions regarding whether benefits under an EAP are considered to be excepted benefits. The Departments recently published guidance announcing their intentions to amend the excepted benefits regulations [46] to provide that benefits under an EAP are considered to be excepted benefits, but only if the program does not provide significant benefits in the nature of medical care or treatment.[47] Under this approach, EAPs that qualify as excepted benefits will not be subject to MHPAEA or these final regulations.

The guidance provides that until rulemaking regarding EAPs is finalized, through at least 2014, the Departments will consider an EAP to constitute excepted benefits only if the EAP does not provide significant benefits in the nature of medical care or treatment. For

[38] There are two sections numbered 1563 in the Affordable Care Act. The section 1563 that is the basis for this rulemaking is the section titled ''Conforming amendments.''

[39] *See* Memo on Amendments to the HIPAA Opt-Out Provision Made by the Affordable Care Act (September 21, 2010). Available at: *http://www.cms.gov/CCIIO/Resources/Files/Downloads/opt_out_memo.pdf.*

[40] *See* Self-Funded Non-Federal Governmental Plans: Procedures and Requirements for HIPAA Exemption Election. Available at: *http://www.cms.gov/CCIIO/Resources/Files/hipaa_exemption_election_instructions_04072011.html.*

[41] Prior to the enactment of the Affordable Care Act, the PHS Act had a parallel provision at section 2721(a); however, after the Affordable Care Act amended, reorganized, and renumbered title XXVII of the PHS Act, that exception no longer exists. *See* 75 FR 34538–34539.

[42] *See* FAQs About the Affordable Care Act Implementation Part III, question 1, available at *http://www.dol.gov/ebsa/faqs/faq-aca3.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs3.html,* which states that ''statutory provisions in effect since 1997 exempting group health plans with 'less than two participants who are current employees' from HIPAA also exempt such plans from the group market reform requirements of the Affordable Care Act.''

[43] Additionally, as provided in the interim final regulations regarding grandfathered health plans, HHS does not intend to use its resources to enforce the requirements of title XXVII of the PHS Act, including the requirements of MHPAEA and these final regulations, with respect to non-Federal governmental retiree-only plans and encourages States not to apply those provisions to issuers of retiree-only plans. HHS will not cite a State for failing to substantially enforce the provisions of part A of title XXVII of the PHS Act in these situations. *See* 75 FR at 34538, 34540 (June 17, 2010).

[44] See Example 5 in paragraph (c)(4)(iii) of the interim final regulations.

[45] See Example 6 in paragraph (c)(4)(iii) of the final regulations.

[46] 26 CFR 54.9831–1(c), 29 CFR 2590.732(c), 45 CFR 146.145(c).

[47] See IRS Notice 2013–54 (available at *http://www.irs.gov/pub/irs-drop/n-13-54.pdf*) and DOL Technical Release 2013–03 (available at *http://www.dol.gov/ebsa/newsroom/tr13-03.html*), Q&A 9. *See also* CMS Insurance Standards Bulletin—Application of Affordable Care Act Provisions to Certain Healthcare Arrangements (available at *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/cms-hra-notice-9-16-2013.pdf*).

this purpose, employers may use a reasonable, good faith interpretation of whether an EAP provides significant benefits in the nature of medical care or treatment.

5. Medicaid and CHIP Managed Care Plans

These final regulations apply to group health plans and health insurance issuers. These final regulations do not apply to Medicaid managed care organizations (MCOs), alternative benefit plans (ABPs), or the Children's Health Insurance Program (CHIP). However, MHPAEA requirements are incorporated by reference into statutory provisions that do apply to those entities. On January 16, 2013, CMS released a State Health Official Letter regarding the application of the MHPAEA requirements to Medicaid MCOs, ABPs, and CHIP.[48] In this guidance, CMS adopted the basic framework of MHPAEA and applied the statutory principles as appropriate across these Medicaid and CHIP authorities. The letter also stated that CMS intends to issue additional guidance that will assist States in their efforts to implement the MHPAEA requirements in their Medicaid programs.

I. Interaction With State Insurance Laws

Several commenters requested that the final regulations clearly describe how MHPAEA interacts with State insurance laws. Commenters sought clarification as to how MHPAEA may or may not preempt State laws that require parity for mental health or substance use disorder benefits, mandate coverage of mental health or substance use disorder benefits, or require a minimum level of coverage (such as a minimum dollar, day, or visit level) for mental health conditions or substance use disorders. These commenters expressed a desire that the final regulations articulate that existing State laws on mental health or substance use disorder benefits would remain in effect to the extent they did not prevent the application of MHPAEA.

The preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and implemented in 29 CFR 2590.731 and 45 CFR 146.143(a)) apply so that the MHPAEA requirements 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 group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement'' of MHPAEA and other applicable provisions.[49] The HIPAA conference report indicates that this is intended to be the ''narrowest'' preemption of State laws.[50]

For example, a State law may mandate that an issuer offer coverage for a particular condition or require that an issuer offer a minimum dollar amount of mental health or substance use disorder benefits. (While MHPAEA does not require plans or issuers to offer any mental health benefits, once benefits are offered, for whatever reason (except as previously described related to PHS Act section 2713), MHPAEA applies to the benefits.) These State law provisions do not prevent the application of MHPAEA, and therefore would not be preempted. To the extent the State law mandates that an issuer provide some coverage for any mental health condition or substance use disorder, benefits for that condition or disorder must be provided in parity with medical/surgical benefits under MHPAEA. This means that an issuer subject to MHPAEA may be required to provide mental health or substance use disorder benefits beyond the State law minimum in order to comply with MHPAEA.

J. Enforcement

Comments received in response to the interim final regulations suggested some confusion and concern regarding the Departments' authority to impose penalties and ensure compliance with the requirements under MHPAEA. The enforcement responsibilities of the Federal government and the States with respect to health insurance issuers are set forth in the PHS Act. Pursuant to PHS Act section 2723(a), States have primary enforcement authority over health insurance issuers regarding the provisions of part A of title XXVII of the PHS Act, including MHPAEA. HHS (through CMS) has enforcement authority over the issuers in a State if the State notifies CMS that it has not enacted legislation to enforce or is otherwise not enforcing, or if CMS determines that the State is not substantially enforcing, a provision (or provisions) of part A of title XXVII of the PHS Act. Currently, CMS believes that most States have the authority to enforce MHPAEA and are acting in the areas of their responsibility. In States that lack the authority to enforce MHPAEA, CMS is either directly enforcing MHPAEA or collaborating with State departments of insurance to ensure enforcement.

The Departments of Labor and the Treasury generally have primary enforcement authority over private sector employment-based group health plans, while HHS has primary enforcement authority over non-Federal governmental plans, such as those sponsored by State and local government employers.

Some commenters suggested that States need a stronger understanding of MHPAEA and its implementing regulations to better inform the public about the protections of the law and to ensure proper compliance by issuers. These commenters believed that States would benefit from additional and continued guidance from CMS regarding the requirements of MHPAEA and its impact upon State law. The Departments encourage State regulators to familiarize themselves with the MHPAEA requirements, in particular the rules governing NQTLs, and any guidance issued by the Departments, so that the States can instruct issuers in their jurisdictions on the correct implementation of the statute and regulations, and appropriately enforce the provisions. The Departments will continue to provide technical assistance to State regulators either individually or through the National Association of Insurance Commissioners to ensure that the States have the tools they need to implement and enforce MHPAEA.

K. Applicability Dates

MHPAEA's statutory provisions were self-implementing and generally became effective for plan years beginning after October 3, 2009.[51] The requirements of the interim final regulations generally became effective on the first day of the first plan year beginning on or after July

[48] Application of the Mental Health Parity and Addiction Equity Act to Medicaid MCOs, CHIP, and Alternative Benefit (Benchmark) Plans, available at: *http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-13-001.pdf.*

[49] The preemption provision of PHS Act section 2724 also applies to individual health insurance coverage.

[50] *See* House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2008.

[51] There is a special effective date for group health plans maintained pursuant to one or more collective bargaining agreements ratified before October 3, 2008, which states that the requirements of the interim final regulations do not apply to the plan (or health insurance coverage offered in connection with the plan) for plan years beginning before the later of either the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension agreed to after October 3, 2008), or July 1, 2010. MHPAEA also provides that any plan amendment made pursuant to a collective bargaining agreement solely to conform to the requirements of MHPAEA will not be treated as a termination of the agreement.

1, 2010. These final regulations apply to group health plans and health insurance issuers offering group health insurance coverage on the first day of the first plan year beginning on or after July 1, 2014. Examples, cross-references, and other clarifications have been added in some places to facilitate compliance and address common questions, much of which has already been published by the Departments.[52] Each plan or issuer subject to the interim final regulations must continue to comply with the applicable provisions of the interim final regulations until the corresponding provisions of these final regulations become applicable to that plan or issuer.

L. Technical Amendment Relating to OPM Multi-State Plan Program and External Review

This document also contains a technical amendment relating to external review with respect to the Multi-State Plan Program (MSPP) administered by the Office of Personnel Management (OPM). Section 2719 of the PHS Act and its implementing regulations provide that group health plans and health insurance issuers must comply with either a State external review process or the Federal external review process. Generally, if a State has an external review process that meets, at a minimum, the consumer protections set forth in the interim final regulations on internal claims and appeals and external review,[53] then an issuer (or a plan) subject to the State process must comply with the State process.[54] For plans and issuers not subject to an existing State external review process (including self-insured plans), a Federal external review process applies.[55] The statute requires the Departments to establish standards, ''through guidance,'' governing a Federal external review process. Through guidance issued by the Departments, HHS has established a Federal external review process for self-insured non-Federal governmental health plans, as well as for plans and issuers in States that do not have an external review process that meets the minimum consumer protections in the regulations.

In proposed regulations published on March 21, 2013 (78 FR 17313), the Departments proposed to amend the interim final regulations implementing PHS Act section 2719 to specify that MSPs will be subject to the Federal external review process under PHS Act section 2719(b)(2) and paragraph (d) of the internal claims and appeals and external review regulations. This proposal reflects the Departments' interpretation of section 2719(b)(2) as applicable to all plans not subject to a State's external review process. OPM has interpreted section 1334(a)(4) of the Affordable Care Act to require OPM to maintain authority over external review because Congress directed that OPM implement the MSPP in a manner similar to the manner in which it implements the contracting provisions of the FEHBP, and in the FEHBP, OPM resolves all external appeals on a nationwide basis as a part of its contract administration responsibilities.[56] This assures consistency in benefit administration for those OPM plans that are offered on a nationwide basis. Accordingly, under OPM's interpretation, it would be inconsistent with section 1334(a)(4) of the Affordable Care Act for MSPs and MSPP issuers to follow State-specific external review processes under section 2719(b)(1) of the PHS Act. OPM's final rule on the establishment of the multi-State plan program nonetheless does require the MSPP external review process to meet the requirements of PHS Act section 2719 and its implementing regulations.[57]

The Departments also proposed to amend the interim final regulations implementing PHS Act section 2719 to specify that the scope of the Federal external review process, as described in paragraph (d)(1)(ii), is the minimum required scope of claims eligible for external review for plans using a Federal external review process, and that Federal external review processes developed in accordance with paragraph (d) may have a scope that exceeds the minimum requirements.

The Departments did not receive any comments relating to these proposed amendments and therefore retain the amendments in this final rule without change, except for one minor correction.[58] The Departments made a typographical error in the March 21, 2013 proposed rule, inadvertently omitting the word ''internal'' from paragraph (d)(1)(i). That provision should have stated that the Federal external review process ''applies, at a minimum, to any adverse benefit determination or final *internal* adverse benefit determination. . . .'' (emphasis added). The Departments did not intend to remove the word ''internal'' from the interim final rule through the proposed amendment, and we are correcting the final amendment to include the word.

III. Economic Impact and Paperwork Burden

Executive Orders 12866 (Regulatory Planning and Review, September 30, 1993) and 13563 (Improving Regulation and Regulatory Review, February 2, 2011) direct agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, to assess the costs and benefits of regulatory alternatives, and to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Agencies must determine whether a regulatory action is ''significant'' which is defined in Executive Order 12866 as an action that is likely to result in a rule (1) having an annual effect on the

[52] For additional examples and other clarifications published by the Departments to facilitate compliance under the interim final rules, *see also http://www.dol.gov/ebsa/faqs/faq-mhpaea.html;* FAQs about Affordable Care Act Implementation (Part V) and Mental Health Parity Implementation, available at *http://www.dol.gov/ebsa/faqs/faq-aca5.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs5.html;* FAQs about Affordable Care Act Implementation (Part VII) and Mental Health Parity Implementation, available at *http://www.dol.gov/ebsa/faqs/faq-aca7.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs7.html;* FAQs on Understanding Implementation of the Mental Health Parity and Addiction Equity Act of 2008, available at *http://www.dol.gov/ebsa/faqs/faq-mhpaeaimplementation.html;* and FAQs for Employees about the Mental Health Parity and Addiction Equity Act, available at *http://www.dol.gov/ebsa/faqs/faq-mhpaea2.html.*

[53] The interim final regulations relating to internal claims and appeals and external review processes are codified at 26 CFR 54.9815–2719T, 29 CFR 2590.715–2719, and 45 CFR 147.136. These requirements do not apply to grandfathered health plans. The interim final regulations relating to status as a grandfathered health plan are codified at 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140.

[54] More information on the regulatory requirements for State external review processes, including the regulations, Uniform Health Carrier External Review Model Act promulgated by the National Association of Insurance Commissioners, technical releases, and other guidance, is available at *http://www.dol.gov/ebsa* and *http://cciio.cms.gov.*

[55] More information on the regulatory requirements for the Federal external review process, including the regulations, technical releases, and other guidance, is available at *http://www.dol.gov/ebsa* and *http://cciio.cms.gov.*

[56] See the OPM proposed rule on establishment of the MSPP, 77 FR 72582, 72585 (Dec. 5, 2012); see also the final rule, 78 FR 15559, 15574 (Mar. 11, 2013) (''we believe our approach to external review is required by section 1334 of the Affordable Care Act[.]''.

[57] See 45 CFR 800.115(k) and 45 CFR part 800; see also 78 FR at 15574 (''the level playing field provisions of section 1324 of the Affordable Care Act would not be triggered because MSPs and MSPP issuers would comply with the external review requirements in section 2719(b) of the PHS Act, just as other health insurance issuers in the group and individual markets are required to do.'').

[58] Treasury is not adopting amendments to the external review regulations in 26 CFR at this time. Any changes to the Treasury external review regulations will be made when the entire section of those regulations is adopted as final regulations.

economy of $100 million or more, 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. Summary—Department of Labor and Department of Health and Human Services

The Departments have determined that this regulatory action is economically significant within the meaning of section 3(f)(1) of the Executive Order, because it is likely to have an effect on the economy of $100 million or more in at least one year. Accordingly, the Departments provide the following assessment of the potential costs and benefits of these final regulations. As elaborated below, the Departments believe that the benefits of the rule justify its costs.

As described earlier in this preamble, these final regulations expand on the protections and parity requirements set forth in the interim final regulations, incorporate clarifications issued by the Departments through sub-regulatory guidance since the issuance of the interim final regulations, and provide clarifications related to NQTLs and disclosure requirements. These final regulations also include additional clarifications and examples illustrating the parity requirements and their applicability, as well as provisions to implement the increased cost exemption with respect to financial requirements and treatment limitations. The HHS final regulation also implements the parity requirements for individual health insurance coverage.

A recent study on plan responses to MHPAEA indicates that by 2011, most plans had removed most financial requirements and treatment limitations that did not meet the requirements of MHPAEA and the interim final regulations.[59] The use of higher copays and coinsurance for inpatient mental health and substance use disorder services declined rapidly in large employer plans following implementation of MHPAEA.[60] In addition, nearly all plans had eliminated the use of separate deductibles for mental health or substance use disorder out-of-pocket costs by 2011.[61] (Even by 2010, only 3.2 percent of plans had used separate deductibles.) The HHS study also found that the number of plans that applied unequal inpatient day limits, outpatient visit limits or other quantitative treatment limitations for mental health or substance use disorder benefits had dropped significantly by 2011.

Since this study found that the implementation of the requirements of MHPAEA has progressed consistent with the interim final rules, this impact analysis includes estimates of any additional costs and benefits resulting from changes made to the provisions in the interim final regulations by these final regulations. As background, in section III.D of this preamble, the Departments summarize the cost estimates included in the interim final regulations.

B. Need for Regulatory Action

Congress directed the Departments to issue regulations implementing the MHPAEA provisions. In response to this Congressional directive, these final regulations clarify and interpret the MHPAEA provisions under section 712 of ERISA, section 2726 of the PHS Act, and section 9812 of the Code. Historically, plans have offered coverage for mental health conditions and substance use disorders at lower levels than coverage for other conditions. Plans limited coverage through restrictive benefit designs that discouraged enrollment by individuals perceived to be high-cost due to their behavioral health conditions and by imposing special limits on mental health and substance use disorder benefits out of concern that otherwise utilization and costs would be unsustainable. Parity advocates argued that these approaches were unfair and limited access to needed treatment for vulnerable populations. In addition, research demonstrated that restrictive benefit designs were not the only way to address costs.[62] Initially, MHPA 1996 was designed to eliminate more restrictive annual and lifetime dollar limits on mental health benefits. However, as illustrated in a General Accountability Office report on implementation of MHPA 1996, the statute had an unintended consequence: most plans coming into compliance instead turned to more restrictive financial requirements and treatment limitations.[63]

These final regulations provide the specificity and clarity needed to effectively implement the provisions of MHPAEA and prevent the use of prohibited limits on coverage, including nonquantitative treatment limitations that disproportionately limit coverage of treatment for mental health conditions or substance use disorders. The requirements in these final regulations are needed to address questions and concerns that have been raised regarding the implications of the interim final regulations with regard to intermediate level services, NQTLs, and the increasing use of multi-tiered provider networks. The Departments' assessment of the expected economic effects of these regulations is discussed in detail below.

C. Response to Comments on the Economic Impact Analysis for the Interim Final Regulations—Department of Labor and Department of Health and Human Services

The Departments received the following public comments regarding the economic impact analysis in the interim final regulations.

One commenter urged that the discussion on cost implications for increased utilization of mental health and substance use disorder services must take into account the cost savings that will result from the elimination of the costs associated with ''unique and discriminatory medical management controls'' (or NQTLs). Although the Departments concur that the nature and rigor of utilization management affects

[59] Final Report: Consistency of Large Employer and Group Health Plan Benefits with Requirements of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. NORC at the University of Chicago for the Office of the Assistant Secretary for Planning and Evaluation. This study analyzed information on large group health plan benefit designs from 2009 through 2011 in several databases maintained by benefits consulting firms that advise plans on compliance with MHPAEA as well as other requirements.

[60] Ibid.

[61] Ibid.

[62] See discussion in the preamble to the interim final rule on the effect of managed care in controlling health plan spending on mental health and substance use disorder treatment under state parity laws and in the Federal Employee Health Benefit Program, Interim Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, 75 Fed. Reg. 5410, 5424–5425 (see e.g., footnote 46) (February 2, 2010).

[63] General Accountability Office, *Mental Health Parity Act: Despite New Federal Standards, Mental Health Benefits Remain Limited,* May 2000, (GAO/HEHS–00–95), p. 5. In this report, GAO found that 87 percent of compliant plans contained at least one more restrictive provision for mental health benefits with the most prevalent being limits on the number of outpatient office visits and hospital day limits.

the cost of care and the administrative expenses associated with care management, there is scant evidence at this time on the way that utilization management will evolve under MHPAEA. Existing evidence suggests that plans and issuers can apply a range of tools to manage care and that even when management of care is consistent with the principles of parity, care management continues. (See the discussion of Oregon state parity law later in this preamble).

Several commenters asserted that the Departments had underestimated the cost and burden of complying with the interim final regulations. However, a study sponsored by HHS found that by 2011 most plans had removed most financial requirements that did not meet the requirements of MHPAEA and the interim final regulations.[64] In addition, the number of plans that applied unequal inpatient day limits, outpatient visit limits, or other quantitative treatment limitations for mental health or substance use disorder benefits had dropped significantly by 2011. Yet, there is no evidence that plans' costs and burdens have been significantly impacted by the requirements of the statute and its implementing interim final regulations. Research has shown that only a very small percentage of plans have dropped mental health or substance use disorder benefits after implementation of MHPAEA and even for those plans that did so, there is no clear evidence that they dropped mental health or substance use disorder benefits because of MHPAEA. Moreover, no plans have applied for the increased cost exemption under MHPAEA. Finally, in spending reports that have been reported in the aggregate, there is no evidence that spending growth for behavioral health saw a significant upturn in 2011, the first full year in which the interim final regulations generally were in effect.

One commenter asserted that plans are not set up to conduct a parity analysis within the six classifications and as a result the interim final regulations impose a substantial burden, especially on employers that offer multiple plans. In response, the Departments note that the alternative to using the six classifications would require conducting a parity analysis across all types of benefits grouped together that would have resulted in incongruous and unintended consequences with, for example, day limits for inpatient care being the standard for outpatient benefits. Moreover, there is no evidence that plans or issuers have found these requirements to be overly burdensome.

One commenter stated that the Federal Employees' Health Benefits Program (FEHBP) parity requirements and State parity laws are not comparable to the standards in the interim final regulations and therefore are not predictive of the possible cost impacts of the interim final regulations, especially regarding NQTLs. In response, the Departments note that, like MHPAEA, the parity requirements for FEHBP apply to financial requirements and treatment limitations for both mental health conditions and substance use disorders. Furthermore, the FEHBP requirements are more expansive in that ''plans must cover all categories of mental health or substance use disorders to the extent that the services are included in authorized treatment plans . . . developed in accordance with evidence-based clinical guidelines, and meet[ing] medical necessity criteria.'' [65] Under the MHPAEA statute, plans and issuers have discretion as to which diagnoses and conditions are covered under the plan.

Several State parity laws are very similar to MHPAEA. For example, Vermont's parity law applies to both mental health and substance use disorder benefits.[66] The Vermont parity law also requires that management of care for these conditions be in accordance with rules adopted by the State Department of Insurance to assure that timely and appropriate access to care is available; that the quantity, location and specialty distribution of health care providers is adequate and that administrative or clinical protocols do not serve to reduce access to medically necessary treatment.[67] These requirements are very similar to the NQTL requirements under MHPAEA which likewise seek to ensure plans and issuers do not inequitably limit access to mental health or substance use disorder treatment. In addition, the NQTLs requirements likewise require comparable approaches to utilization management through protocols and other strategies in determining coverage of mental health and substance use disorder treatment compared to medical/surgical treatment. A study of this State parity law also did not find significant increases in cost.[68]

The Oregon State parity law is also very similar to MHPAEA in that it applies to mental health and substance use disorder financial requirements and treatment limitations and also applies to NQTLs. According to the Oregon Insurance Division, utilization management tools such as ''selectively contracted panels of providers, health policy benefit differential designs, preadmission screening, prior authorization, case management, utilization review, or other mechanisms designed to limit eligible expenses to treatment that is medically necessary'' may not be used for management of mental health or substance use disorder benefits unless they were used in the same manner that such methods were used for other medical conditions.[69] A study of the Oregon parity law found that plans removed coverage limits as required and used management techniques to the same degree or less under this law and the impact on mental health and substance use disorder spending was minimal.[70] Together, the similarities between the FEHBP, Vermont, and Oregon parity requirements lead the Departments to conclude that any differences in terms of the impacts on cost would be small.

Several commenters argued that the requirement in the interim final regulations to use a single or shared deductible in a classification is overly burdensome and would require significant resources to implement, particularly by MBHOs since they often work with multiple plans. One commenter asserted that this requirement could impact the willingness of sponsors to offer mental health or substance use disorder benefits. In response, the Departments note that a study sponsored by HHS found that nearly all plans had eliminated the use of separate deductibles for mental health and substance use disorder benefits by

[64] Final Report: Consistency of Large Employer and Group Health Plan Benefits with Requirements of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. NORC at the University of Chicago for the Office of the Assistant Secretary for Planning and Evaluation. This study analyzed information on large group health plan benefit designs from 2009 through 2011 in several databases maintained by benefits consulting firms that advise plans on compliance with MHPAEA as well as other requirements.

[65] FEHB Program Carrier Letter, No. 2009–08, April 20, 2009.

[66] Vt. Stat. Ann tit. 8, § 4089b (1998).

[67] Ibid.

[68] Rosenbach M, Lake T, Young C, et al. Effects of the Vermont Mental Health and Substance Abuse Parity Law. DHHS Pub. No. SMA 03–3822, Rockville, MD: Substance Abuse and Mental Health Services Administration, 2003.

[69] Q&A Oregon Mental Health Parity Law for Providers. Oregon Insurance Division Web site. *http://www.cbs.state.or.us/ins/FAQs/mental-health-parity_provider-faqs.pdf.*

[70] McConnell JK, Gast SH, Ridgely SM. Behavioral health insurance parity: Does Oregon's experience presage the national experience with the Mental Health Parity and Addiction Equity Act? *American Journal of Psychiatry* 2012; 169(1): 31–38.

2011.[71] According to this study, even in 2010, only a very small percentage of plans were using separate deductibles. This study and other research have shown that only a very small percent of plans have dropped mental health or substance use disorder benefits after implementation of MHPAEA and there is no clear evidence they did so because of MHPAEA.

One commenter urged that the regulations be revised to be less burdensome for plans that are part of a more comprehensive network of benefits within Medicaid healthcare delivery systems. These final regulations apply to group health plans and health insurance issuers but do not, by their own terms, apply to Medicaid. In response, the Departments note that CMS oversees implementation of federal requirements for the Medicaid program. CMS issued a state health official letter on the application of MHPAEA to Medicaid managed care organizations, the Children's Health Insurance Program, and Alternative Benefit (Benchmark) plans on January 16, 2013.[72]

Two commenters raised concerns about the burden imposed on plans by the requirement that provider reimbursement rates be based on comparable criteria particularly for MBHOs that may as a result have to use multiple rate schedules. The Departments believe that the process of establishing rate schedules is already complex, that MBHOs that contract with other multiple plans are likely to already have multiple rate schedules, and that adding a parity requirement to ensure that rates for behavioral health providers are based on comparable criteria to those used for medical/surgical providers does not add much to this complexity.

One commenter argued that the costs for outpatient mental health and substance use disorder benefits will be higher than estimated because the NQTL parity standard would hamper plans' ability to manage care and control costs. In response, the Departments note that, as discussed above, the Oregon State parity law also applies to NQTLs and a study of this law found that plans in that State removed coverage limits as required and used management techniques to the same degree or less under the Oregon law and the impact on mental health and substance use disorder spending was minimal.[73]

D. Summary of the Regulatory Impact Analysis for the Interim Final Regulations—Department of Labor and Department of Health and Human Services

In the regulatory impact analysis for the interim final regulations, the Departments quantified the costs associated with three aspects of that rulemaking: The cost of implementing a unified deductible, compliance review costs, and costs associated with information disclosure requirements in MHPAEA. The Departments estimated the cost of developing the interface necessary to implement a single deductible as $35,000 per affected interface between a managed behavioral health company and a group health plan with a total estimated cost at $39.2 million (amounting to $0.60 per health plan enrollee) in the first year. The interim final regulations' impact analysis estimated the cost to health plans and insurance issuers of reviewing coverage for compliance with MHPAEA and the interim final regulations at $27.8 million total. This estimate was based on findings that there were about 460 issuers and at least 120 MBHOs and assumed that per-plan compliance costs would be low because third party administrators for self-insured plans would spread the cost across multiple client plans.

Regarding the requirement to disclose medical necessity criteria, the Departments assumed that each plan would receive one such request on average, that it would take a trained staff person about five minutes to respond, and with an average hourly rate of $27, the total annual cost would be about $1 million. The Departments assumed only 38 percent of requests would be delivered electronically with de minimis cost and that the materials, printing and postage costs of responding to about 290,000 requests by paper would be an additional $192,000 for a total of about $1.2 million per year. These costs totaled $114.6 million undiscounted over ten years (2010–2019). The Departments did not include a cost for the requirement in MHPAEA to disclose the reasons for any claims denials because the Department of Labor's claims procedure regulation (at 29 CFR 2560.503–1) already required such disclosures and the same third-party administrators and insurers are hired by ERISA and non-ERISA covered plans so both types of plans were likely to already be in compliance with these rules.

In terms of transfers, in the interim final regulations impact analysis, the Departments estimated premiums would rise 0.4 percent due to MHPAEA, reflecting a transfer from individuals not using mental health and substance use disorder benefits to those that do. This estimated increase in premiums amounted to a transfer of $2.36 billion in 2010 gradually increasing each year over a ten year period to $2.81 billion in 2019. This estimate was based on findings in the literature. For a more complete discussion, see section III.I later in this preamble.

E. Summary of the Impacts of the Final Rule—Department of Labor and Department of Health and Human Services

Table 1, below, summarizes the costs associated with the final regulations above the costs estimated for the interim final regulations. Over a five-year period of 2014 to 2018, the total undiscounted cost of the rule is estimated to be $1.16 billion in 2012 dollars. Columns D and E display the costs discounted at 3 percent and 7 percent, respectively. Column F shows a transfer of $3.5 billion over the five-year period. All other numbers included in the text are not discounted, except where noted.

[71] Final Report: Consistency of Large Employer and Group Health Plan Benefits with Requirements of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. NORC at the University of Chicago for the Office of the Assistant Secretary for Planning and Evaluation.

[72] Application of the Mental Health Parity and Addiction Equity Act to Medicaid MCOs, CHIP, and Alternative Benefit (Benchmark) Plans, available at: *http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-13-001.pdf.*

[73] McConnell JK, Gast SH, Ridgely SM. Behavioral health insurance parity: does Oregon's experience presage the national experience with the Mental Health Parity and Addiction Equity Act? *American Journal of Psychiatry* 2012; 169(1): 31–38.

TABLE 1—TOTAL COSTS OF FINAL REGULATIONS

[In millions of 2012 dollars]

Year	Incremental change in individual market plan spending (A)	Disclosure requirements (B)	Total undiscounted costs A+B	Total 3% discounted costs (D)	Total 7% discounted costs (E)	Transfers (undiscounted) (F)
2014	$189.9	$4.3	$194.2	$194.2	$194.2	$699.2
2015	208.4	4.3	212.7	206.5	198.8	732.0
2016	226.8	4.3	231.1	217.9	201.9	764.8
2017	245.3	4.3	249.6	228.4	203.7	797.6
2018	263.8	4.3	268.1	238.2	204.5	830.4
Total	1,134.2	21.5	1,155.6	1085.1	1,003.1	3,824.0

1. Estimated Number of Affected Entities

MHPAEA has already brought about coverage changes for approximately 103 million participants in 420,700 ERISA-covered employment-based group health plans with more than 50 participants, and an estimated 29.5 million participants in the approximately 23,000 public, non-Federal employer group health plans with more than 50 participants sponsored by State and local governments. Plans with 50 or fewer participants were previously exempt from MHPAEA.[74] In addition, approximately 510 health insurance issuers providing mental health or substance use disorder benefits in the group and individual health insurance markets and at least 120 MBHOs providing mental health or substance use disorder benefits to group health plans are also affected by these final regulations.[75]

As discussed earlier, the Affordable Care Act extended MHPAEA to apply to a health insurance issuer offering individual health insurance coverage and the HHS final regulation regarding EHB requires QHPs and non-grandfathered health insurance plans in the individual and small group markets to provide covered mental health and substance use disorder services in a manner that complies with the parity requirements of the MHPAEA implementing regulations in order to satisfy the requirement to cover EHB. According to the 2012 Medical Loss Ratio filings, about 11 million people are covered in the individual market; another 7 million are expected to gain coverage in 2014 under the Affordable Care Act.[76] There are an estimated 12.3 million participants in about 837,000 non-grandfathered ERISA-covered employment-based group plans with 50 or fewer participants, and an estimated 800,000 participants in approximately 59,000 non-grandfathered public, non-Federal employer group health plans with 50 or fewer participants sponsored by State and local governments which were previously exempt from MHPAEA.

About one-third of those who are currently covered in the individual market have no coverage for substance use disorder services and nearly 20 percent have no coverage for mental health services, including outpatient therapy visits and inpatient crisis intervention and stabilization.[77] In addition, even when individual market plans provide these benefits, the federal parity law previously did not apply to these plans to ensure that coverage for mental health and substance use disorder services is generally comparable to coverage for medical and surgical care.

In the small group market, coverage of mental health and substance use disorder treatment is more common than in the individual market. We estimate that about 95 percent of those with small group market coverage have substance abuse and mental health benefits.[78] Again, the federal parity law previously did not apply to small group plans. In many States, State parity laws offer those covered in this market some parity protection, but most State parity laws are narrower than the federal parity requirement.

2. Anticipated Benefits

a. Benefits Attributable to the Statute or Interim Final Regulations

In enacting MHPAEA, one of Congress' primary objectives was to improve access to mental health and substance use disorder benefits by eliminating more restrictive visit limits and inpatient days covered as well as higher cost-sharing for mental health and substance use disorder benefits that were prevalent in private insurance plans after implementation of MHPA 1996.[79]

A recent study funded by HHS found that large group health plans and insurance issuers have made significant changes to financial requirements and treatment limitations for mental health and substance use disorder benefits in the first few years following enactment of MHPAEA.[80] The statute went into effect for plan years beginning after October 3, 2009 (calendar year 2010 for

[74] The Departments' estimates of the numbers of affected participants are based on DOL estimates using the 2012 CPS. ERISA plan counts are based on DOL estimates using the 2011 MEP–IC and Census Bureau statistics. The number of State and local government employer-sponsored plans was estimated using 2012 Census data and DOL estimates. Please note that the estimates are based on survey data that is not broken down by the employer size covered by MHPAEA making it difficult to exclude from estimates those participants employed by employers who employed an average of at least 2 but no more than 50 employees on the first day of the plan year.

[75] The Departments' estimate of the number of insurers is based on medical loss ratio reports submitted by issuers for 2012 reporting year and industry trade association membership. Please note that these estimates could undercount small State-regulated insurers.

[76] ''Effects on Health Insurance and the Federal Budget for the Insurance Coverage Provisions in the Affordable Care Act—May 2013 Baseline,'' Congressional Budget Office, May 14, 2013.

[77] ASPE Issue Brief, ''Essential Health Benefits: Individual Market Coverage,'' ed. U.S. Department of Health & Human Services (2011).

[78] ASPE Issue Brief, ''Essential Health Benefits: Comparing Benefits in Small Group Products and State and Federal Employee Plans,'' ed. U.S. Department of Health & Human Services (2011).

[79] See the interim final regulations for a fuller discussion of the legislative history.

[80] Final Report: Consistency of Large Employer and Group Health Plan Benefits with Requirements of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 at pages vii–ix. NORC at the University of Chicago for the Office of the Assistant Secretary for Planning and Evaluation. This study analyzed information on large group health plan benefit designs from 2009 through 2011 in several databases maintained by benefits consulting firms that advise plans on compliance with MHPAEA as well as other requirements.

many plans) and the interim final regulations went into effect for plans years beginning on or after July 10, 2010 (calendar year 2011 for many plans). This HHS study found that by 2011, most plans had removed most financial requirements and treatment limitations that did not meet the requirements of MHPAEA and its implementing interim final regulations.

According to this HHS study, in 2010, ten percent of a nationally representative sample of large employers' behavioral health benefits had *inpatient* financial requirements (*e.g.,* deductibles, co-pays, or co-insurance) that needed modification to comply with MHPAEA. Analysis of a separate set of large employer-based plans for 2011 found virtually all 230 large employer-based plans included had inpatient benefits that conformed to MHPAEA standards. A third database of plan designs from 2009 through 2011 confirmed that the use of higher copayments and coinsurance for inpatient mental health and substance use disorder services declined rapidly in large employer plans following implementation of MHPAEA.[81]

Among the representative sample of plans for 2010 included in this study, more than 30 percent had copayments or coinsurance rates for *outpatient* mental health and substance use disorder benefits that were inconsistent with MHPAEA. In a separate sample of large employer-based plans for 2011, the use of higher coinsurance for mental health and substance use disorder benefits dropped dramatically. However, the study found that about 20 percent of the 140 plans tested continued to utilize outpatient in-network co-pays that failed to meet MHPAEA standards. A third database of plan designs for 2009 through 2011 confirmed a dramatic decline in the use of more restrictive cost-sharing for outpatient mental health and substance use disorder benefits although a minority continued to use high copays.

Nearly all plans had eliminated the use of separate deductibles for mental health or substance use disorder out-of-pocket costs by 2011. (Even by 2010, only 3.2 percent of plans had used separate deductibles.)[82]

The HHS study also found that the number of plans that applied unequal inpatient day limits, outpatient visit limits or other quantitative treatment limitations for mental health or substance use disorder benefits had dropped significantly by 2011. In 2010, it found that most large employer-based plans used day limits on mental health *inpatient* benefits that generally conformed to MHPAEA standards. While almost 20 percent of these plans imposed more restrictive day limits on in-network, inpatient benefits for substance use disorders than applied to medical/surgical benefits, the separate sample of 2011 large employer-based plans indicated a significant decline with only eight percent of plans using stricter day limits for inpatient benefits for substance use disorders. These findings were corroborated by analysis of an additional database of plan designs from 2009 through 2011, which also indicated a dramatic decline in the proportion of plans using more restrictive inpatient day limits on mental health and substance use disorder benefits (from 50 percent in 2009 to ten percent in 2010).

In 2010, more than 50 percent of large employer-based plans in the study's representative sample used more restrictive visit limits for outpatient mental health and substance use disorder services that did not conform to MHPAEA standards. But, in the 2011 sample of large employer-based health plans, less than seven percent were using unequal visit limits. This trend was also evident in the plan design database comparing plans across 2009, 2010, and 2011. There too, substantial reductions in quantitative treatment limitations for mental health and substance use disorder benefits in large employer-based plans were seen after enactment of MHPAEA.

b. Potential Benefits of the Final Regulations

The Departments expect that MHPAEA and these final regulations will have their greatest impact on people needing the most intensive treatment and financial protection. The Departments cannot estimate how large this impact will be, but the numbers of beneficiaries who have a medical necessity for substantial amount of care are likely to be relatively small.

Improving coverage in the small group and individual markets will also expand financial protection for a significant segment of those covered and soon to be covered by private health insurance. One indicator of the consequences of unprotected financial risk is bankruptcies. The literature on bankruptcies identifies mental health care as a source of high spending that is less protected than other areas of health care.[83] One estimate is that about 17 percent of bankruptcies are due to health care bills.[84] Another estimate using the same data is that about ten percent of medical bankruptcies are attributable to high mental health care costs, and an additional two to three percent of bankruptcies are attributable to drug and alcohol abuse.[85] Improvements in coverage of mental health and substance use disorder services expected to result from implementation of MHPAEA can be expected to reduce some of the financial risk and also yield successful treatment for people with mental health or substance use disorder problems.

Earlier entry into treatment may have a salutary impact on entry into disability programs. Of the 8.6 million disabled workers receiving Social Security Disability Insurance benefits, 28 percent are identified as having a disability related to mental disorders, not including intellectual disability. Mental disorders are the second largest diagnostic category among awards to disabled workers, after conditions associated with the musculoskeletal system and connective tissue (29 percent) but ahead of those related to the circulatory system (8.5 percent).[86]

Improving coverage of mental health and substance use disorder treatment could also more generally improve productivity and improve earnings among those with these conditions. Studies have shown that the high prevalence of depression causes $31 billion to $51 billion annually in lost productivity in the United States.[87] More days of work loss and work impairment are caused by mental illness than by various other chronic conditions, including diabetes and lower back pain.[88] A recent meta-analysis of randomized studies that

[81] Ibid at page xii.

[82] Ibid at page xi.

[83] Robertson CT, R Egelhof, M Hoke, Get Sick, Get Out: The Medical Causes of Home Mortgage Foreclosures, Health Matrix 18:65–105, 2008.

[84] Dranove D and ML Millenson, Medical Bankruptcy: Myth Versus Fact, Health Affairs 25, w74–w83 February 28, 2006.

[85] Dranove D and ML Millenson, Medical Bankruptcy: Myth Versus Fact, Health Affairs 25, w74–w83 February 28, 2006.

[86] Social Security Administration (SSA). (2012). Annual Statistical Report on the Social Security Disability Insurance Program, 2011. SSA Publication No. 13–11826.

[87] Stewart, W.F., Ricci, J.A., Chee, E., Hahn, S.R. & Morgenstein, D. (2003, June 18). ''Cost of lost productive work time among US workers with depression.''*JAMA: Journal of the American Medical Association. 289, 23,* 3135–3144; Kessler, R.C., Akiskal, H.S., Ames, M., Birnbaum, H., Greenberg, P., Hirschfeld, H.M.A. et al. (2006). ''Prevalence and effects of mood disorders on work performance in a nationally representative sample of U.S. workers.'' *American Journal of Psychiatry,* 163, 1561–1568.

[88] Stewart, W.F., Ricci, J.A., Chee, E., Hahn, S.R. & Morgenstein, D. (2003, June 18). ''Cost of lost productive work time among US workers with depression.'' *JAMA: Journal of the American Medical Association. 289, 23,* 3135–3144.

examined the impact of treating depression on labor market outcomes showed that while the labor supply effects were smaller than the impact on clinical symptoms, there were consistently significant and positive effects of treatment on labor supply.[89] [90] Although the expected impact of MHPAEA on labor supply is likely modest for large employers, it is probably considerably larger for small group and individual plans where pre-MHPAEA coverage was more limited than in the large group market.

As stated earlier, these final regulations clarify that the general rule regarding consistency in classification of benefits applies to intermediate services provided under the plan or coverage. These final regulations are expected to maintain or perhaps slightly improve coverage for intermediate levels of care. These services that fall between inpatient care for acute conditions and regular outpatient care can be effective at improving outcomes for people with mental health conditions or substance use disorders.[91] [92] [93]

This final rule allows for policies such as multi-tiered provider networks. Multi-tiered networks are spreading rapidly among large group policies. There is some early evidence that such approaches can successfully attenuate costs and improve quality of care.

3. Anticipated Costs

a. Illustrative Results From Past Policy Interventions

Existing evidence on implementation of parity in States and FEHBP suggests there will not be significant increases in plan expenditures and premiums as a result of the increased access to mental health and substance use disorder services that are expected to result from these final regulations. Since the effective date of the interim final regulations, no employer has applied for a cost exemption. A recent research study funded by HHS shows that in general, large employer-sponsored plans eliminated higher financial requirements and more limited inpatient day limits, outpatient visit limits and other quantitative treatment limitations for mental health or substance use disorder benefits fairly quickly in the first few years following the enactment of MHPAEA. Differences in cost sharing for prescription medications and emergency care also declined, and by 2011 almost all large employer-based plans studied appeared to comply with MHPAEA for those benefits.[94] Over that same period, a very small percent of employers dropped mental health or substance use disorder coverage. Moreover, there is no clear evidence that the small number of plans that did drop mental health and substance use disorder coverage did so because of MHPAEA.

Furthermore, evidence suggests that plans did not exclude more mental health or substance use disorder diagnoses from coverage in response to MHPAEA and there is no evidence that plans or employers reduced medical/surgical benefits to comply with parity requirements.[95] All of these findings indicate that any increases in the costs of covering mental health and substance use disorder benefits following implementation of MHPAEA did not have a substantial impact on overall plan spending.

Other recent analyses of claims data from self-insured employer-sponsored group health plans have suggested that an overwhelming majority of privately insured individuals who used mental health or substance use disorder services prior to MHPAEA did so at a rate far below pre-parity limits on benefits.[96] Using econometric models to estimate the effect of MHPAEA on high-utilization beneficiaries who are most likely to use expanded coverage, researchers have estimated that MHPAEA may at most increase total health care costs by 0.6 percent.[97] Furthermore, a recent study of substance use disorder spending from 2001 to 2009 by large employer-sponsored health plans shows that substance use disorder spending remained a relatively constant share of all health spending, comprising about 0.4 percent of all health spending in 2009. This low share of overall spending means that even large increases in utilization of substance use disorder treatment are unlikely to have a significant impact on premiums.[98]

Although most State parity laws are more limited than MHPAEA, some are comparable, and studies on the impact of these more comparable laws provide a fair indication of the effect of MHPAEA. For example, Oregon's State parity law enacted in 2007 is quite comparable in that it applies to treatment limits (including NQTLs) and financial requirements for mental health and substance use disorder benefits. A study of the Oregon parity law found that plans removed coverage limits and used management techniques more consistently but did not significantly increase spending on mental health and substance use disorder care.[99] Vermont's parity law also applies to both mental health and substance use disorder services. A study of this State parity law also did not find significant increases in spending.[100]

b. Costs (and Transfers) Attributable to the Final Regulations

The Departments do not expect the clarification that plans should classify intermediate services consistently for mental health and substance use disorders and medical/surgical benefits will result in a significant increase in costs. Nor do the Departments expect the clarification that the NQTL rules apply to these types of services to cause a substantial increase in plan spending. Analyses of claims data for large group health plans conducted by two different contractors for HHS indicate that most plans cover intermediate behavioral health services, particularly partial hospitalization and intensive outpatient services, but intermediate services account for less than one percent of total health plan spending.[101] Internal

[89] Timbie JW, M Horvitz-Lennon, RG Frank and SLT Normand, A Meta-Analysis of Labor Supply Interventions for Major Depressive Disorder, Psychiatric Services 57(2) 212–219, 2006.

[90] Wang PS, GE Simon, J Avorn et al, Telephone Screening, Outreach, and Care Management for Depressed Workers and Impact on Clinical and Work Productivity Outcomes, JAMA 298(12) 1401–1411, 2007.

[91] Bateman A, Fonagy P: Treatment of borderline personality disorder with psychoanalytically oriented partial hospitalization: an 18-month follow-up. Am J Psychiatry 2001; 158:36–42.

[92] Horvitz-Lennon M, Normand SL, Gaccione P and Frank RG. ''Partial vs. Full Hospitalization for Adults in Psychiatric Distress: A Systematic Review of the Published Literature.'' *American Journal of Psychiatry,* 158(5), 2001.

[93] Drake, Robert E., Erica L. O'Neal, and Michael A. Wallach. ''A systematic review of psychosocial research on psychosocial interventions for people with co-occurring severe mental and substance use disorders.'' *Journal of substance abuse treatment* 34.1 (2008): 123–138.

[94] Final Report for ASPE: Consistency of Large Employer and Group Health Plan Benefits with Requirements of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 at page x. NORC at the University of Chicago for the Office of the Assistant Secretary for Planning and Evaluation.

[95] Ibid at page xi.

[96] Mark, TL, Vandivort-Warren, R, Miller, K, Mental health spending by private insurance: Implications for the Mental Health Parity and Addiction Equity Act, Psych Services, 2012; 63(4): 313–318.

[97] Ibid.

[98] Ibid.

[99] Ibid.

[100] Mark, TL, Vandivort-Warren, R, Spending trends on substance abuse treatment under private employer-sponsored insurance, 2001–2009, Drug and Alcohol Dependence, 2012; 125:203–207.

[101] Short-Term Analysis to Support Mental Health and Substance Use Disorder Parity Implementation. RAND Corporation for the Office of the Assistant Secretary for Planning and Evaluation. February 8, 2012 (*http://aspe.hhs.gov/daltcp/reports/2012/mhsud.shtml*); internal analysis of claims data for large self-insured employers and health plans.

research and analysis by HHS indicates that the number of enrollees who use intermediate services for mental health and substance use disorders is very small. Furthermore, those who used intermediate services did so at modest rates. In addition, the number of enrollees who used intermediate services for medical/surgical benefits was similarly small. Available data suggest that intermediate behavioral health services account for between eight percent and eleven percent of total behavioral health spending in private insurance. This means that since behavioral health care accounts for about 5.5 percent of health plan spending, intermediate behavioral health spending amounts to between 0.4 and 0.6 percent of total health plan spending. In light of the small number of enrollees that utilize this intermediate level of care and the small percentage of total costs that intermediate mental health and substance use disorder services comprise, the Departments expect that any increase in coverage would be very unlikely to have any significant effect on total health plan spending.

Moreover, the Departments investigated the patterns of classification of intermediate services and found that they are generally covered in the six classifications set out in the interim final regulations. Behavioral health intermediate services are generally categorized in a similar fashion as analogous medical services; for example, residential treatment tends to be categorized in the same way as skilled nursing facility care in the inpatient classification. Thus, the Departments do not expect much change in how most plans consider intermediate behavioral health care in terms of the six existing benefit classifications.

Tiered provider networks are expanding in private health insurance. The interim final regulations made no allowance for such insurance innovations. The final regulations clarify how the parity requirements apply to multi-tiered provider networks. The evidence on the impact of these networks is beginning to emerge.[102] There is some evidence that points to small reductions in health spending associated with tiered provider networks. There are also studies showing little to no savings associated with these network designs. Some modest impact on quality has been observed in some cases and none in others.[103] The Departments are therefore assuming no cost impact of this provision.

There is limited data on spending for mental health and substance use disorder treatment under individual health insurance plans. The Departments therefore rely on some recent tabulations from the Medical Expenditure Panel Survey (MEPS) and a recent report on premiums and coverage in the individual health insurance market along with information from several other sources to make projections of the likely impact of applying MHPAEA to the individual market.[104] The Departments began by estimating baseline spending in the individual market. The Departments calculate the weighted average premium for the individual insurance market from the paper by Whitmore and colleagues that was reported in 2007 dollars and inflate it to 2012 dollars using the GDP deflator. Because premiums report more than just health care costs, the Departments convert the premium into plan payments for services by applying the medical loss ratio of 0.70 reported in the technical appendix to the Medical Loss Ratio interim final rule.[105] The resulting estimate is $2437 in 2012 dollars. That figure represents total health spending by plans per member per year. The Departments obtain an estimate of the behavioral health costs by assuming that about four percent of those expenditures are for behavioral health. That figure is obtained by recognizing that coverage for behavioral health in the individual market is more limited than in the employer sponsored insurance market where mental health and substance use disorder care accounts for about 5.5 percent of spending overall.[106] Applying the four percent figure to the plan spending estimates results in an estimate of $98 per member per year in plan spending for mental health and substance use disorder benefits. The Departments then calculate the share of spending paid out-of-pocket by using the MEPS data to obtain an estimate of outpatient mental health and substance use disorder out-of-pocket spending, because outpatient services generally carry higher cost sharing than inpatient care and because overall non-inpatient care accounts for about 65 to 70 percent of behavioral health care. The MEPS data indicate that out-of-pocket costs for mental health and substance use disorder care accounts for 47 percent of total spending. This contrasts with an estimate of 26 percent for medical/surgical care. The implication of this is a total (plan and out-of-pocket) spending estimate for mental health and substance use disorder benefits of $185 per member per year in 2012. It is important to recognize that roughly 40 percent of total behavioral health spending in private insurance is accounted for by spending on psychotropic drugs and drug benefits will remain relatively unchanged, to the extent prescription drug tiers are based on neutral factors independent of whether a particular drug is prescribed to treat a medical/surgical condition, or a mental health condition or substance use disorder. This is because psychotropic drugs are typically under the same benefit design and formulary rules as all other drugs in private health insurance. Thus the baseline spending that would be affected by MHPAEA is estimated to be $111 per member per year.

To obtain the impact of extending MHPAEA to the individual market, the Departments assume that a primary impact of MHPAEA is to equalize cost sharing arrangements between mental health and substance use disorder benefits and medical/surgical benefits. The Departments therefore assume that the out-of-pocket share for mental health and substance use disorder services covered in the individual insurance market will decline from 47 percent to 26 percent. The Departments apply an estimate of the price elasticity of demand to the total spending level for mental health and substance use disorder for people covered in the individual market. Two recent studies have shown that the price elasticity of demand for mental health and substance use disorder care has declined significantly in the era of managed care.[107] They show that the elasticity of

[102] Thomas JM, G Nalli AF Cockburn. What we know and don't know about tiered provider networks, Journal of Health Care Finance 33(4), 53–67, 2007; Sinaiko AD, Tiered provider Networks as a Strategy to Improve Health Care Quality and Efficiency, NICHM Foundation February 2012.

[103] Ibid.

[104] Whitmore H, JR Gabel, J Pickreign R McDevitt, The Individual Insurance Market Before Reform: Low Premiums and Low Benefits, Medical Care Research and Review 68(5): 594–606, 2011.

[105] Technical Appendix to the Regulatory Impact Analysis for the Interim Final Rule for Health Insurance Issuers Implementing the Medical Loss Ratio Requirements under the Patient Protection and Affordable Care Act, Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, November 22, 2010, available at *http://www.cms.gov/CCIIO/Resources/Files/Downloads/mlr_20101122_technical_appendix.pdf.*

[106] Substance Abuse and Mental Health Services Administration. National Expenditures for Mental Health Services and Substance Abuse Treatment, 1986–2009. HHS Publication No. SMA–13–4740. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013.

[107] Meyerhoefer CD and Zuvekas, S, ''New Estimates of the Demand for Physical and Mental Health Treatment'', *Health Economics* 19(3): 297–

demand for ambulatory care fell between -0.16 and -0.26. This is relevant because the Whitmore paper reports that roughly 95 percent of individual policies are either under managed care arrangements of some form or are part of a Health Savings Account policy (17.5 percent). The Departments therefore apply an elasticity of -0.21 to the 45 percent reduction in out-of-pocket costs for people using mental health and substance use disorder care. That yields a projected 9.5 percent increase in total spending for mental health and substance use disorder care for people in the individual market. Applying the 9.5 percent estimate to the $111 baseline subject to MHPAEA provisions results in an impact estimate of $10.55 per covered person in 2012 or a 5.7 percent increase in total mental health and substance use disorder spending and a 0.04 percent change in total plan spending. The Departments apply the per insured person cost of mental health and substance use disorder care in the individual market estimate to an estimate of the population that would be covered under individual coverage after January of 2014. Based on the Congressional Budget Office estimates of the impact of the Affordable Care Act, the Departments expect enrollment in the individual market to be approximately 18 million people as of 2014.[108] Applying the $10.55 estimate to the 18 million people [109] suggests a total spending increase of about $189.9 million in 2012 dollars. The Departments project that, by 2018, the 25 million-enrollee estimate shown in CBO's report will capture all individual plan coverage. Assuming a constant rate of growth in enrollment, the five year cost will be $1.13 billion. This estimate reflects increased spending on mental health and substance use disorder services resulting from coverage expansion that is attributable to MHPAEA above and beyond historical levels in the small group and individual markets and beyond the EHB coverage requirements for mental health and substance use disorder coverage.

MHPAEA can be expected to affect coverage in the small group market through the provisions governing EHBs. The Departments estimate that there are currently approximately 27 million people insured under small group benefits. The Congressional Budget Office (CBO) and HHS projections are in agreement that there will be little change in the size of this market in the coming years. Thus for the purposes of this analysis the Departments assume that the market will remain stable at 27.3 million insured (including 26.1 million in ERISA plans and 1.2 million in public plans).[110] In examining coverage in the small group market using data from 2012, the Departments find that plans used comparable levels of management to large group plans in that less than 1 percent of either small group or large group enrollees are covered by indemnity insurance arrangements. HMOs account for 15 percent of small group and 16 percent of large group enrollees. PPOs/POS plans account for 61 percent of small group and 67 percent of large group enrollees. High deductible plans make up 17 percent of small group and 24 percent of large group enrollees.[111] In addition, other recent analyses show that the actuarial value of health insurance benefits in large and small group plans are largely identical.[112] Data from recent studies of parity implementation in Oregon that focused in great part on small group coverage shows that parity had the effect of reducing out-of-pocket spending. Yet because it was done in the context of managed care arrangements (including regulations of management practices) there was no statistically significant impact on total spending on mental health and substance use disorder services attributable to parity.[113] For this reason, the Departments assume that virtually all the impact of MHPAEA on the small group market involves a shift of final responsibility for payment from households to insurers. The Oregon parity results (McConnell et al., 2012) are consistent with a shift of roughly 0.5 percent of spending. This shift in cost constitutes a transfer (see additional analysis in section III.D.4 below).

The final regulations retain the disclosure provisions for group health plans and health insurance coverage offered in connection with a group health plan. In addition, these disclosure provisions are extended to non-grandfathered insurance coverage in the small group market through the EHB requirements and to the individual market as a result of the amendments to the PHS Act under the Affordable Care Act as discussed in section II.F and II.H.1 of this preamble. The burden and cost related to these disclosure requirements are discussed in detail in the Paperwork Reduction Act section below and are estimated to be approximately $4.3 million per year.

4. Transfers

The application of MHPAEA to the individual market will also shift responsibility for some existing payments from individuals to health plans by reducing cost sharing from 47 percent to 26 percent, or $336 million in the first year increasing to $467 million by 2018 reflecting increases in the number of individual enrollees. The Departments estimate that this shift in cost-sharing to plans combined with the increase in spending due to increased utilization discussed above could be expected to lead to an increase of 0.8% in premiums in the individual market. The small group plan average premium in 2012 was $5588. Applying the 0.5 percent estimated shift in spending derived above in section III.E.3 to the average premium as a proxy for plan spending, the Departments obtain a figure of $27.94. Multiplying that figure by 13 million enrollees in small group plans yields an estimated transfer amount of $363 million per year. Likewise, premiums in the small group market may be expected to increase by 0.5%.

F. Regulatory Alternatives

In addition to the regulatory approach outlined in these final regulations, the Departments considered several alternatives when developing policy regarding NQTLs, disclosure requirements, multi-tier provider networks, and how parity applies to intermediate services.

Multiple stakeholders requested clarification regarding the application of the parity requirements to NQTLs. The Departments considered narrowing the clinically appropriate standard of care exception instead of eliminating it.

315 2010;. Lu C, Frank, RG and McGuire TG. ''Demand Response of Mental Health Services to Cost Sharing Under Managed Care.'' *Journal of Mental Health Policy and Economics* 11(3):113–126 2008.

[108] ''Effects on Health Insurance and the Federal Budget for the Insurance Coverage Provisions in the Affordable Care Act—May 2013 Baseline,'' Congressional Budget Office, May 14, 2013.

[109] The figure of 11 million enrollees based on the 2012 MLR filings data discussed earlier in this preamble is added to the CBO estimate of enrollees in the individual market in 2014.

[110] Congressional Budget Office, Letter to the Honorable Paul Ryan: Analysis of the Administration's Announced delay of certain Requirements Under the Affordable Care Act, July 30, 2013; and CBO's May 2013 Estimates of the Effects of the Affordable Care Act on Health Insurance Coverage, May 14, 2013.

[111] Kaiser Family Foundation and Health Research and Educational Trust, Employer Health Benefits—2012 Annual Survey.

[112] McDevitt R, J Gabel, R Lore et al, Group Insurance: A Better Deal for Most People than Individual Plans, Health Affairs 29(1): 156–164, 2010.

[113] McConnell KJ, SHN Gast, MS Ridgely et al. Behavioral Health Insurance Parity: Does Oregon's Experience Presage the National Experience with the Mental Health Parity and Addiction Equity Act?, American Journal of Psychiatry 2012; 169(1): 31–38.

However, this approach could result in even more confusion regarding how to apply the parity standard for NQTLs. Moreover, a technical expert panel comprised of individuals with clinical expertise in mental health and substance use disorder treatment as well as general medical treatment, and experience developing and using evidence-based practice guidelines, could not identify situations in which the exception allowing a clinically appropriate standard of care to justify a different use of NQTLs would be needed.[114] Thus, the Departments believe that clarification in paragraph (c)(4) of the regulations will not reduce the flexibility afforded to plans and issuers by the underlying rule.

As stated earlier, concerns have also been raised regarding disclosure and transparency. The Departments considered whether participants and beneficiaries have adequate access to information regarding the processes, strategies, evidentiary standards, or other factors used to apply the NQTL and also comparable information regarding medical/surgical benefits to ensure compliance with MHPAEA. These final regulations make clear that plans and issuers are required to make this information available in accordance with MHPAEA and other applicable law, such as ERISA and the Affordable Care Act, more generally. The Departments also are publishing contemporaneously with publication of these final regulations, another set of FAQs.[115] Among other things, these FAQs solicit comments on whether more should be done, and how, to ensure transparency and compliance.

The Departments are aware of the increasing use of multi-tier provider networks and commenters have asked how parity requirements should apply to those arrangements. The Departments considered as an alternative requiring plans to collapse their provider tiers in conducting an assessment of compliance with parity. However, this would have negated a primary reason to have provider tiers which is to offer incentives for providers to accept lower reimbursement in exchange for lower copays for their services and presumably greater patient volume. The Departments considered this alternative to be interfering unreasonably with legitimate plan cost-management techniques. The approach in the final regulations strikes a reasonable balance between allowing plans to use provider tiers to effectively manage costs and the policy principles of MHPAEA.

As described earlier in this preamble, many commenters to the interim final regulations requested that the Departments clarify how MHPAEA affects the scope of coverage for intermediate services (such as residential treatment for substance use disorders or mental health conditions, partial hospitalization, and intensive outpatient treatment) and how these services fit within the six classifications set forth by the interim final regulations. Some stakeholders recommended establishing a separate classification for this intermediate level of care. The Departments considered this approach but determined that whereas the existing classifications—inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care, and prescription medications—are classifications commonly used by health plans and issuers, a separate classification for intermediate care is not commonly used by plans and issuers. The Departments believe that a clearer, more reasonable approach is to incorporate the principles of parity into existing benefit designs and care management strategies. Thus, the final regulations provide examples of intermediate services and clarify that plans and issuers must assign covered intermediate level mental health and substance use disorder benefits to the existing six benefit classifications in the same way that they assign comparable intermediate medical/surgical benefits to these classifications.

G. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services

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''). A change in revenues of more than 3 percent to 5 percent is often used by the Departments of Labor and HHS as the measure of significant economic impact on a substantial number of small entities.

As discussed in the Web Portal interim final rule with comment period published on May 5, 2010 (75 FR 24481), HHS examined the health insurance industry in depth in the Regulatory Impact Analysis 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 example, to travel insurance policies or dental discount policies) that fell below the size thresholds for ''small'' business (currently $35.5 million in annual receipts for health insurance issuers).[116] HHS also used the data from Medical Loss Ratio annual report submissions for the 2012 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 by these regulations, since they do not include receipts from these companies' other lines of business. It is estimated that there are 58 small entities with less than $35.5 million each in earned premiums that offer individual or group health insurance coverage and would therefore be subject to the requirements of these regulations. Forty-three percent of these small issuers belong to larger 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 $35.5 million. For these reasons, the Departments expect that these final regulations will not significantly affect a substantial number of small issuers.

As noted previously, MHPAEA provisions are extended to non-grandfathered insurance coverage in the small group market through the EHB requirements. Group health plans and health insurance coverage offered by small employers will incur costs to comply with the provisions of these final regulations. There are an estimated 837,000 ERISA-covered non-grandfathered employer group health plans with 50 or fewer participants, and an estimated 59,000 non-grandfathered public, non-Federal employer group health plans with 50 or fewer participants sponsored by State and local governments which were

[114] Short-Term Analysis to Support Mental Health and Substance Use Disorder Parity Implementation. RAND Corporation for the Office of the Assistant Secretary for Planning and Evaluation. February 8, 2012 (*http://aspe.hhs.gov/daltcp/reports/2012/mhsud.shtml*).

[115] Available at: *http://www.dol.gov/ebsa/healthreform/and http://www.cms.gov/cciio/Resources/Fact-Sheets-and-FAQs/index.html.*

[116] ''Table of Small Business Size Standards Matched To North American Industry Classification System Codes,'' effective July 23, 2013, U.S. Small Business Administration, available at *http://www.sba.gov.*

previously exempt from MHPAEA. Approximately 13 million participants of these plans will benefit from the provisions of these regulations. As explained earlier in this impact analysis, virtually all the impact of MHPAEA on the small group market will involve a shift of final responsibility for payment from households to insurers, resulting in an estimated increase of 0.5 percent in spending. The cost related to the disclosure requirements is estimated to be approximately $2.4 million for non-grandfathered small group plans that were previously exempt from MHPAEA. The Departments expect the rules to reduce the compliance burden imposed on plans and insurers by the statute and the implementing interim final regulations by clarifying definitions and terms contained in the statute and providing examples of acceptable methods to comply with specific provisions.

H. Special Analyses—Department of the Treasury

For purposes of the Department of the Treasury, it has been determined that this Treasury decision is not a significant regulatory action for purposes of Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information contained in these final regulations will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The final regulations generally apply to employers who provide health coverage through group health plans to employees that include benefits for mental health or substance use disorder conditions. The IRS expects the final regulations to reduce the compliance burden imposed on plans and issuers by clarifying definitions and terms contained in the statute and providing examples of acceptable methods to comply with specific provisions. MHPAEA and the regulations under it do not apply to employers with 50 or fewer employees (although, separately, the EHB regulations adopt MHPAEA). Moreover, small employers subject to the rule that have more than 50 employees will generally provide any health coverage through insurance or a third-party administrator. The issuers of insurance or other third-party administrators of the health plans, rather than the small employers, will as a practical matter, satisfy the requirements of the regulations in order to provide a marketable product. For this reason, the burden imposed by the reporting requirement of the statute and these final regulations on small entities is expected to be near zero. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

I. Paperwork Reduction Act

The table below summarizes the hour burden and costs related to the disclosure requirements in these regulations. For plans that use issuers or third party administrators, the costs are reported as cost burden while for plans that administer claims in-house, the burden is reported as hour burden.

Plan type	Number of respondents	Labor hours	Cost burden
ERISA-Covered Employer Group Health Plans	1,258,000	11,976	$2,989,000
Public, Non-Federal Employer Group Health Plans	82,324	2,517	1,375,312
Individual Market Health Plans	418	25,465	51,066

1. Departments of Labor and the Treasury

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the interim final regulations solicited comments on the information collections included therein. The Departments submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the interim final regulations for OMB's review. OMB approved the ICR on April 27, 2010, under OMB Control Numbers 1210–0138 (Department of Labor) and 1545–2165 (Department of the Treasury/IRS). The Departments also submitted an ICR to OMB in accordance with 44 U.S.C. 3507(d) for the ICR as revised by the final regulations. OMB approved the ICR under OMB control numbers 1210–0138 and 1545–2165, which will expire on November 30, 2016.

As discussed earlier in this preamble, the final regulations retain the disclosure provisions for group health plans and health insurance coverage offered in connection with a group health plan. (In addition, these disclosure provisions are extended to non-grandfathered insurance coverage in the small group market through the EHB requirements and to the individual market as a result of the amendments to the PHS Act under the Affordable Care Act, as discussed in section II.F and II.H.1 of this preamble.)

The MHPAEA disclosures are information collection requests (ICRs) subject to the PRA. The final regulations (29 CFR 2590.712(d)(2)) require a Claims Denial Disclosure to be made available upon request or as otherwise required by the plan administrator (or the health insurance issuer offering such coverage) to a participant or beneficiary that provides the reason for any denial under a group health plan (or health insurance coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits.

The Departments did not submit an IRC to OMB for the Claims Denial Disclosure, because the Department of Labor's ERISA claims procedure regulation (29 CFR 2560.503–1) and disclosure regulation (29 CFR 2520.104b–1) already require such disclosure. The same third-party administrators and insurers are hired by ERISA and non-ERISA covered plans, so both types of plans were likely to already be in compliance with the Department of Labor rules. Therefore, the hour and cost burden associated with the claims denial notice already is accounted in the ICR for the ERISA claims procedure regulation that was approved under OMB Control Number 1210–0053.

The final regulations (29 CFR 2590.712(d)(1)) also require plan administrators to make the plan's medical necessity determination criteria available upon request to potential participants, beneficiaries, or contracting providers. The Departments are unable to estimate with certainty the number of requests for medical necessity criteria disclosures that will be received by plan administrators; however, the Departments have assumed that, on average, each plan affected by the rule will receive one

request. The Departments estimate that there are about 1,258,000 ERISA covered health plans affected by the regulations. The Departments estimate that approximately seven percent of large plans and all small plans administer claims using service providers; therefore, about 11 percent of the medical necessity criteria disclosures will be done in-house. For PRA purposes, plans using service providers will report the costs as a cost burden, while plans administering claims in-house will report the burden as an hour burden.

The Departments assume that it will take a medically trained clerical staff member five minutes to respond to each request at a wage rate of $26.85 [117] per hour. This results in an annual hour burden of nearly 12,000 hours and an associated equivalent cost of nearly $322,000 for the approximately 144,000 requests done in-house by plans. The remaining 1,114,000 medical necessity criteria disclosures will be provided through service providers resulting in a cost burden of approximately $2,493,000.

The Departments also calculated the cost to deliver the requested medical necessity criteria disclosures. Many insurers and plans already may have the information prepared in electronic form, and the Departments assume that 38 percent of requests will be delivered electronically resulting in a de minimis cost. The Departments estimate that the cost burden associated with distributing the approximately 780,000 medical necessity criteria disclosures sent by paper will be approximately $496,000.[118] The Departments note that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.[119] The Departments will provide notice of OMB approval via a **Federal Register** notice.

These paperwork burden estimates are summarized as follows:

Type of Review: Ongoing.

Agencies: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, U.S. Department of the Treasury,

Title: Notice of Medical Necessity Criteria under the Mental Health Parity and Addition Equity Act of 2008.

OMB Number: 1210–0138; 1545–2165.

Affected Public: Business or other for-profit; not-for-profit institutions.

Total Respondents: 1,258,000.

Total Responses: 1,258,000.

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 5,988 hours (Employee Benefits Security Administration); 5,988 hours (Internal Revenue Service).

Estimated Total Annual Burden Cost: $1,494,000 (Employee Benefits Security Administration); $1,494,000 (Internal Revenue Service).

2. Department of Health and Human Services

As discussed earlier in this preamble, the final regulations retain the disclosure provisions for group health plans and health insurance coverage offered in connection with a group health plan. (In addition, these disclosure provisions are extended to non-grandfathered insurance coverage in the small group market through the EHB requirements and to the individual market as a result of the amendments to the PHS Act under the Affordable Care Act, as discussed in section II.F and II.H.1 of this preamble.) The burden estimates below have been updated to reflect these changes.

In addition, as described earlier in this preamble, the final regulations reiterate that, in addition to MHPAEA's disclosure requirements, provisions of other applicable law require disclosure of information relevant to medical/surgical, mental health, and substance use disorder benefits. For example, the Departments' claims and appeals regulations under the Affordable Care Act (applicable to non-grandfathered group health plans (including non-ERISA plans) and non-grandfathered health insurance issuers in the group and individual markets),[120] set forth rules regarding claims and appeals, including the right of claimants (or their authorized representative) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits.[121] The burden associated with this disclosure is accounted for in the ICR approved under OMB control number 0938–1099.

Medical Necessity Disclosure

HHS estimates that there are about 30.2 million participants covered by approximately 82,0004 State and local public plans that are subject to the MHPAEA disclosure requirements.[122] HHS is unable to estimate with certainty the number of requests for medical necessity criteria disclosures that will be received by plan administrators; however, HHS has assumed that, on average, each plan affected by the rule will receive one request. HHS estimates that approximately 93 percent of large plans administer claims using third party administrators. Furthermore the vast majority of all smaller employers usually are fully insured such that issuers will be administering their claims. Therefore 5.1 percent of claims are administered in-house. For plans that use issuers or third party administrators, the costs are reported as cost burden while for plans that administer claims in-house, the burden is reported as hour burden. For purposes of this estimate, HHS assumes that it will take a medically trained clerical staff member five minutes to respond to each request at a wage rate of $26.85 [123] per hour. This results in an annual hour burden of 350 hours and an associated equivalent cost of about $9,000 for the approximately 4,200 requests handled by plans. The remaining 78,000 claims (94.9 percent) are provided through a third-party administrator or an issuer and results in a cost burden of approximately $175,000.

In the individual market there will be an estimated 18 million enrollees [124] enrolled in plans offered by 418 issuers

[117] EBSA estimates based on the National Occupational Employment Survey (June 2012, Bureau of Labor Statistics) and the Employment Cost Index (September 2012, Bureau of Labor Statistics).

[118] This estimate is based on an average document size of four pages, $.05 cents per page material and printing costs, $.44 cent postage costs.

[119] 5 CFR 1320.1 through 1320.18.

[120] 29 CFR 2560.503–1. *See also* 26 CFR 54.9815–2719T(b)(2)(i), 29 CFR 2590.715–2719(b)(2)(i), and 45 CFR 147.136(b)(2)(i), requiring non-grandfathered plans and issuers to incorporate the internal claims and appeals processes set forth in 29 CFR 2560.503–1.

[121] As described earlier in this preamble, this includes documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan.

[122] Non-Federal governmental plans may opt-out of MHPAEA and certain other requirements under section 2721 of the PHS Act. Since past experience has shown that the number of non-Federal governmental plans that opt-out is small, the impact of the opt-out election should be immaterial on the Department's estimates.

[123] EBSA estimates based on the National Occupational Employment Survey (June 2012, Bureau of Labor Statistics) and the Employment Cost Index (September 2012, Bureau of Labor Statistics).

[124] Estimate based on medical loss ratio reports submitted by issuers for 2012 reporting year and from the study ''Effects on Health Insurance and the Federal Budget for the Insurance Coverage Provisions in the Affordable Care Act—May 2013 Baseline,'' by Congressional Budget Office, May 14, 2013.

offering coverage in multiple states. Assuming that, on average, each issuer will receive one request in each State that it offers coverage in, there will be a total of about 2,600 requests in each year. The annual burden to issuers for sending the medical necessity disclosures is estimated to be 220 hours with an associated equivalent cost of approximately $6,000.

Claims Denial Disclosure

As described earlier in this preamble, the Department of Labor's ERISA claims procedure regulation (29 CFR 2560.503–1) already requires such disclosures. Although non-ERISA covered plans, such as plans sponsored by State and local governments and individual plans that are subject to the PHS Act, are not required to comply with the ERISA claims procedure regulation, the final regulations provide that these plans (and health insurance coverage offered in connection with such plans) will be deemed to satisfy the MHPAEA claims denial disclosure requirement if they comply with the ERISA claims procedure regulation.

Using assumptions similar to those used for the ERISA claims procedure regulation, HHS estimates that for State and local public plans, there will be approximately 30.9 million claims for mental health or substance use disorder benefits with approximately 4.6 million denials that could result in a request for the reason for denial. HHS has no data on the percent of denials that will result in a request for an explanation, but assumed that ten percent of denials will result in a request for an explanation (464,000 requests). HHS estimates that a medically trained clerical staff member may require five minutes to respond to each request at a labor rate of $26.85 per hour. This results in an annual burden of nearly 2,000 hours and an associated equivalent cost of nearly $53,000 for the approximately 24,000 requests completed by plans. The remaining 440,000 are provided through an issuer or a third-party administrator, which results in a cost burden of approximately $984,000. In the individual market, under similar assumptions, HHS estimates that there will be approximately 18.4 million claims for mental health or substance use disorder benefits with approximately 2.75 million denials that could result in a request for explanation of denial. Assuming ten percent of denials result in such a request, it is estimated that there will be about 275,000 requests for an explanation of reason for denial, which will be completed with a burden of 23,000 hours and equivalent cost of approximately $616,000.

In association with the explanation of denial, participants may request a copy of the medical necessity criteria. While HHS does not know how many notices of denial will result in a request for the criteria of medical necessity, HHS assumes that ten percent of those requesting an explanation of the reason for denial will also request the criteria of medical necessity, resulting in about 46,000 requests, 2,400 of which will be completed in-house with a burden of 200 hours and equivalent cost of approximately $5,000 and about 44,000 requests handled by issuers or third-party providers with a cost burden of approximately $98,000. In the individual market, under similar assumptions, HHS estimates that there will be about 27,500 requests for medical necessity criteria, which will be completed with a burden of 2,295 hours and equivalent cost of approximately $62,000.

HHS also calculated the cost to deliver the requested information. Many insurers or plans may already have the information prepared in electronic format, and HHS assumes that requests will be delivered electronically resulting in a de minimis cost.[125] HHS estimates that the cost burden associated with distributing the approximately 256,000 disclosures sent by paper will be approximately $169,000.[126]

The ICRs associated with the medical necessity and claims denial disclosures are currently approved under OMB control number 0938–1080. The Department will seek OMB approval for revised ICRs that will include the burden to small group health plans and individual market plans related to the disclosure requirements in the final regulations. A **Federal Register** notice will be published, providing the public with an opportunity to comment on the ICRs.

J. 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 final 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 2013, that threshold level is approximately $141 million. These regulations are not subject to the UMRA because they were not preceded by a notice of proposed rulemaking. However, consistent with policy embodied in the UMRA, these regulations have been designed to be a low-burden alternative for State, local and tribal governments, and the private sector while achieving the objectives of MHPAEA.

K. Federalism Statement—Department of Labor and Department of Health and Human Services

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

In the Departments' view, these regulations have Federalism implications, because they have direct effects on the States, the relationship between the Federal government and States, or on the distribution of power and responsibilities among various levels of government. However, in the Departments' view, the Federalism implications of these regulations are substantially mitigated because, with respect to health insurance issuers, the Departments expect that the majority of States have enacted or will enact laws or take other appropriate action resulting in their meeting or exceeding the Federal MHPAEA standards.

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, the preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the MHPAEA requirements 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 group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement'' of MHPAEA. The conference report accompanying HIPAA indicates that this is intended to be the ''narrowest'' preemption of State laws. (See House Conf. Rep. No. 104–736, at

[125] Following the assumption in the ERISA claims regulation, it was assumed 75 percent of the explanation of denials disclosures would be delivered electronically, while it was assumed that 38 percent of non-denial related requests for the medical necessity criteria would be delivered electronically.

[126] This estimate is based on an average document size of four pages, $.05 cents per page material and printing costs, $0.46 cent postage costs.

205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018.)

States may continue to apply State law requirements except to the extent that such requirements prevent the application of the MHPAEA requirements that are the subject of this rulemaking. State insurance laws that are more stringent than the Federal requirements are unlikely to ''prevent the application of'' MHPAEA, and be preempted. Accordingly, States have significant latitude to impose requirements on health insurance issuers 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 policy making discretion of the States, the Departments have engaged in numerous efforts to consult with and work cooperatively with affected State and local officials. For example, HHS has provided training on MHPAEA for state regulators though the National Association Insurance Commissioners (NAIC) and has been available to State regulators to address any issues that arise. HHS has also collaborated with regulators in a number of States on MHPAEA enforcement strategies with the goal of maintaining state regulator involvement in the implementation and enforcement of MHPAEA in their States. It is expected that the Departments will continue to act in a similar fashion in enforcing the MHPAEA requirements.

Throughout the process of developing these regulations, to the extent feasible within the specific preemption provisions of HIPAA as it applies to MHPAEA, the Departments have attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments' view that they have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to these regulations, the Departments certify that the Employee Benefits

Security Administration and the Centers for Medicare & Medicaid Services have complied with the requirements of Executive Order 13132 for the attached regulations in a meaningful and timely manner.

L. Congressional Review Act

These final 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.), 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 have been transmitted to Congress and the Comptroller General for review.

IV. Statutory Authority

The Department of the Treasury regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 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. 3765; Public Law 110–460, 122 Stat. 5123; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 USC 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

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.

John Dalrymple,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Approved: November 6, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

Signed this 6th day of November, 2013.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: October 25, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: November 5, 2013.

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 amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 is amended by removing the entry for § 54.9812–1T and by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.9812–1 also issued under 26 U.S.C. 9833. * * *

■ **Par. 2.** Section 54.9812–1T is removed.

■ **Par. 3.** Section 54.9812–1 is added to read as follows:

§ 54.9812–1 Parity in mental health and substance use disorder benefits.

(a) *Meaning of terms.* For purposes of this section, except where the context clearly indicates otherwise, the following terms have the meanings indicated:

Aggregate lifetime dollar limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan (or health insurance coverage offered in connection with such a plan) for any coverage unit.

Annual dollar limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a group health plan (or health insurance coverage offered in connection with such a plan) for any coverage unit.

Coverage unit means coverage unit as described in paragraph (c)(1)(iv) of this section.

Cumulative financial requirements are financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. (However, cumulative financial requirements do not include aggregate lifetime or annual dollar limits because these two terms are excluded from the meaning of financial requirements.)

Cumulative quantitative treatment limitations are treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits.

Financial requirements include deductibles, copayments, coinsurance, or out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Medical/surgical benefits means benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the plan or health insurance coverage and in accordance with applicable Federal and State law, but does not include mental health or substance use disorder benefits. Any condition defined by the plan or coverage as being or as not being a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the International Classification of Diseases (ICD) or State guidelines).

Mental health benefits means benefits with respect to items or services for mental health conditions, as defined under the terms of the plan or health insurance coverage and in accordance with applicable Federal and State law. Any condition defined by the plan or coverage as being or as not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the most current version of the ICD, or State guidelines).

Substance use disorder benefits means benefits with respect to items or services for substance use disorders, as defined under the terms of the plan or health insurance coverage and in accordance with applicable Federal and State law. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the DSM, the most current version of the ICD, or State guidelines).

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as 50 outpatient visits per year), and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage. (See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.) A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation for purposes of this definition.

(b) *Parity requirements with respect to aggregate lifetime and annual dollar limits.* This paragraph (b) details the application of the parity requirements with respect to aggregate lifetime and annual dollar limits. This paragraph (b) does not address the provisions of PHS Act section 2711, as incorporated in ERISA section 715 and Code section 9815, which prohibit imposing lifetime and annual limits on the dollar value of essential health benefits.

(1) *General*—(i) *General parity requirement.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits must comply with paragraph (b)(2), (b)(3), or (b)(5) of this section.

(ii) *Exception.* The rule in paragraph (b)(1)(i) of this section does not apply if a plan (or health insurance coverage) satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan (or health insurance coverage) does not include an aggregate lifetime or annual dollar limit on any medical/surgical benefits or includes an aggregate lifetime or annual dollar limit that applies to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual dollar limit, respectively, on mental health or substance use disorder benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan (or health insurance coverage) includes an aggregate lifetime or annual dollar limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual dollar limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health or substance use disorder benefits in a manner that does not distinguish between the medical/surgical benefits and mental health or substance use disorder benefits; or

(ii) Not include an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is less than the aggregate lifetime or annual dollar limit, respectively, on medical/surgical benefits. (For cumulative limits other than aggregate lifetime or annual dollar limits, see paragraph (c)(3)(v) of this section prohibiting separately accumulating cumulative financial requirements or cumulative quantitative treatment limitations.)

(4) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to an aggregate lifetime or annual dollar limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual dollar limits). Any reasonable method may be used to determine whether the dollar amount expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(5) *Plan not described in paragraph (b)(2) or (b)(3) of this section*—(i) *In general.* A group health plan (or health insurance coverage) that is not described in paragraph (b)(2) or (b)(3) of this section with respect to aggregate lifetime or annual dollar limits on medical/surgical benefits, must either—

(A) Impose no aggregate lifetime or annual dollar limit, as appropriate, on mental health or substance use disorder benefits; or

(B) Impose an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is no less than an average limit calculated for medical/surgical benefits in the following manner. The average limit is calculated by taking into account the

weighted average of the aggregate lifetime or annual dollar limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(5)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated dollar limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(5), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(4) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(c) *Parity requirements with respect to financial requirements and treatment limitations*—(1) *Clarification of terms*—(i) *Classification of benefits.* When reference is made in this paragraph (c) to a classification of benefits, the term ''classification'' means a classification as described in paragraph (c)(2)(ii) of this section.

(ii) *Type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a type of financial requirement or treatment limitation, the reference to type means its nature. Different types of financial requirements include deductibles, copayments, coinsurance, and out-of-pocket maximums. Different types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits. See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.

(iii) *Level of a type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a level of a type of financial requirement or treatment limitation, level refers to the magnitude of the type of financial requirement or treatment limitation. For example, different levels of coinsurance include 20 percent and 30 percent; different levels of a copayment include $15 and $20; different levels of a deductible include $250 and $500; and different levels of an episode limit include 21 inpatient days per episode and 30 inpatient days per episode.

(iv) *Coverage unit.* When reference is made in this paragraph (c) to a coverage unit, coverage unit refers to the way in which a plan (or health insurance coverage) groups individuals for purposes of determining benefits, or premiums or contributions. For example, different coverage units include self-only, family, and employee-plus-spouse.

(2) *General parity requirement*—(i) *General rule.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation. The application of the rules of this paragraph (c)(2) to financial requirements and quantitative treatment limitations is addressed in paragraph (c)(3) of this section; the application of the rules of this paragraph (c)(2) to nonquantitative treatment limitations is addressed in paragraph (c)(4) of this section.

(ii) *Classifications of benefits used for applying rules*—(A) *In general.* If a plan (or health insurance coverage) provides mental health or substance use disorder benefits in any classification of benefits described in this paragraph (c)(2)(ii), mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided. In determining the classification in which a particular benefit belongs, a plan (or health insurance issuer) must apply the same standards to medical/surgical benefits and to mental health or substance use disorder benefits. To the extent that a plan (or health insurance coverage) provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in the classification, the rules of this paragraph (c) apply separately with respect to that classification for all financial requirements or treatment limitations (illustrated in examples in paragraph (c)(2)(ii)(C) of this section). The following classifications of benefits are the only classifications used in applying the rules of this paragraph (c):

(*1*) *Inpatient, in-network.* Benefits furnished on an inpatient basis and within a network of providers established or recognized under a plan or health insurance coverage. See special rules for plans with multiple network tiers in paragraph (c)(3)(iii) of this section.

(*2*) *Inpatient, out-of-network.* Benefits furnished on an inpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes inpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(*3*) *Outpatient, in-network.* Benefits furnished on an outpatient basis and within a network of providers established or recognized under a plan or health insurance coverage. See special rules for office visits and plans with multiple network tiers in paragraph (c)(3)(iii) of this section.

(*4*) *Outpatient, out-of-network.* Benefits furnished on an outpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes outpatient benefits under a plan (or health insurance coverage) that has no network of providers. See special rules for office visits in paragraph (c)(3)(iii) of this section.

(*5*) *Emergency care.* Benefits for emergency care.

(*6*) *Prescription drugs.* Benefits for prescription drugs. See special rules for multi-tiered prescription drug benefits in paragraph (c)(3)(iii) of this section.

(B) *Application to out-of-network providers.* See paragraph (c)(2)(ii)(A) of this section, under which a plan (or health insurance coverage) that provides mental health or substance use disorder benefits in any classification of benefits must provide mental health or substance use disorder benefits in every classification in which medical/surgical benefits are provided, including out-of-network classifications.

(C) *Examples.* The rules of this paragraph (c)(2)(ii) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A group health plan offers inpatient and outpatient benefits and does not contract with a network of providers. The plan imposes a $500

deductible on all benefits. For inpatient medical/surgical benefits, the plan imposes a coinsurance requirement. For outpatient medical/surgical benefits, the plan imposes copayments. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 1,* because the plan has no network of providers, all benefits provided are out-of-network. Because inpatient, out-of-network medical/surgical benefits are subject to separate financial requirements from outpatient, out-of-network medical/surgical benefits, the rules of this paragraph (c) apply separately with respect to any financial requirements and treatment limitations, including the deductible, in each classification.

Example 2. (i) *Facts.* A plan imposes a $500 deductible on all benefits. The plan has no network of providers. The plan generally imposes a 20 percent coinsurance requirement with respect to all benefits, without distinguishing among inpatient, outpatient, emergency care, or prescription drug benefits. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 2,* because the plan does not impose separate financial requirements (or treatment limitations) based on classification, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance across all benefits.

Example 3. (i) *Facts.* Same facts as *Example 2,* except the plan exempts emergency care benefits from the 20 percent coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan imposes separate financial requirements based on classifications, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance separately for—

(A) Benefits in the emergency care classification; and

(B) All other benefits.

Example 4. (i) *Facts.* Same facts as *Example 2,* except the plan also imposes a preauthorization requirement for all inpatient treatment in order for benefits to be paid. No such requirement applies to outpatient treatment.

(ii) *Conclusion.* In this *Example 4,* because the plan has no network of providers, all benefits provided are out-of-network. Because the plan imposes a separate treatment limitation based on classifications, the rules of this paragraph (c) apply with respect to the deductible and coinsurance separately for—

(A) Inpatient, out-of-network benefits; and

(B) All other benefits.

(3) *Financial requirements and quantitative treatment limitations*—(i) *Determining ''substantially all'' and ''predominant''*—(A) *Substantially all.* For purposes of this paragraph (c), a type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. (For this purpose, benefits expressed as subject to a zero level of a type of financial requirement are treated as benefits not subject to that type of financial requirement, and benefits expressed as subject to a quantitative treatment limitation that is unlimited are treated as benefits not subject to that type of quantitative treatment limitation.) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to mental health or substance use disorder benefits in that classification.

(B) *Predominant*—(*1*) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification as determined under paragraph (c)(3)(i)(A) of this section, the level of the financial requirement or quantitative treatment limitation that is considered the predominant level of that type in a classification of benefits is the level that applies to more than one-half of medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation.

(*2*) If, with respect to a type of financial requirement or quantitative treatment limitation that applies to at least two-thirds of all medical/surgical benefits in a classification, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to the financial requirement or quantitative treatment limitation, the plan (or health insurance issuer) may combine levels until the combination of levels applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in the classification. The least restrictive level within the combination is considered the predominant level of that type in the classification. (For this purpose, a plan may combine the most restrictive levels first, with each less restrictive level added to the combination until the combination applies to more than one-half of the benefits subject to the financial requirement or treatment limitation.)

(C) *Portion based on plan payments.* For purposes of this paragraph (c), the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the financial requirement or quantitative treatment limitation).

(D) *Clarifications for certain threshold requirements.* For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied. For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied. Similar rules apply for any other thresholds at which the rate of plan payment changes. (See also PHS Act section 2707(b) and Affordable Care Act section 1302(c), which establish limitations on annual deductibles for non-grandfathered health plans in the small group market and annual limitations on out-of-pocket maximums for all non-grandfathered health plans.)

(E) *Determining the dollar amount of plan payments.* Subject to paragraph (c)(3)(i)(D) of this section, any reasonable method may be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation).

(ii) *Application to different coverage units.* If a plan (or health insurance coverage) applies different levels of a financial requirement or quantitative treatment limitation to different coverage units in a classification of medical/surgical benefits, the predominant level that applies to substantially all medical/surgical benefits in the classification is determined separately for each coverage unit.

(iii) *Special rules*—(A) *Multi-tiered prescription drug benefits.* If a plan (or health insurance coverage) applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative

treatment limitations) and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits, the plan (or health insurance coverage) satisfies the parity requirements of this paragraph (c) with respect to prescription drug benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(B) *Multiple network tiers.* If a plan (or health insurance coverage) provides benefits through multiple tiers of in-network providers (such as an in-network tier of preferred providers with more generous cost-sharing to participants than a separate in-network tier of participating providers), the plan may divide its benefits furnished on an in-network basis into sub-classifications that reflect network tiers, if the tiering is based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section (such as quality, performance, and market standards) and without regard to whether a provider provides services with respect to medical/surgical benefits or mental health or substance use disorder benefits. After the sub-classifications are established, the plan or issuer may not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification using the methodology set forth in paragraph (c)(3)(i) of this section.

(C) *Sub-classifications permitted for office visits, separate from other outpatient services.* For purposes of applying the financial requirement and treatment limitation rules of this paragraph (c), a plan or issuer may divide its benefits furnished on an outpatient basis into the two sub-classifications described in this paragraph (c)(3)(iii)(C). After the sub-classifications are established, the plan or issuer may not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification using the methodology set forth in paragraph (c)(3)(i) of this section. Sub-classifications other than these special rules, such as separate sub-classifications for generalists and specialists, are not permitted. The two sub-classifications permitted under this paragraph (c)(3)(iii)(C) are:

(*1*) Office visits (such as physician visits), and

(*2*) All other outpatient items and services (such as outpatient surgery, facility charges for day treatment centers, laboratory charges, or other medical items).

(iv) *Examples.* The rules of paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) of this section are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* For inpatient, out-of-network medical/surgical benefits, a group health plan imposes five levels of coinsurance. Using a reasonable method, the plan projects its payments for the upcoming year as follows:

Coinsurance rate	0%	10%	15%	20%	30%	Total.
Projected payments	$200x	$100x	$450x	$100x	$150x	$1,000x.
Percent of total plan costs	20%	10%	45%	10%	15%	
Percent subject to coinsurance level	N/A	12.5% (100x/800x)	56.25% (450x/800x)	12.5% (100x/800x)	18.75% (150x/800x)	

The plan projects plan costs of $800x to be subject to coinsurance ($100x + $450x + $100x + $150x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to coinsurance, and 56.25 percent of the benefits subject to coinsurance are projected to be subject to the 15 percent coinsurance level.

(ii) *Conclusion.* In this *Example 1,* the two-thirds threshold of the substantially all standard is met for coinsurance because 80 percent of all inpatient, out-of-network medical/surgical benefits are subject to coinsurance. Moreover, the 15 percent coinsurance is the predominant level because it is applicable to more than one-half of inpatient, out-of-network medical/surgical benefits subject to the coinsurance requirement. The plan may not impose any level of coinsurance with respect to inpatient, out-of-network mental health or substance use disorder benefits that is more restrictive than the 15 percent level of coinsurance.

Example 2. (i) *Facts.* For outpatient, in-network medical/surgical benefits, a plan imposes five different copayment levels. Using a reasonable method, the plan projects payments for the upcoming year as follows:

Copayment amount	$0	$10	$15	$20	$50	Total.
Projected payments	$200x	$200x	$200x	$300x	$100x	$1,000x.
Percent of total plan costs	20%	20%	20%	30%	10%	
Percent subject to copayments	N/A	25% (200x/800x)	25% (200x/800x)	37.5% (300x/800x)	12.5% (100x/800x)	

The plan projects plan costs of $800x to be subject to copayments ($200x + $200x +$300x + $100x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to a copayment.

(ii) *Conclusion.* In this *Example 2,* the two-thirds threshold of the substantially all standard is met for copayments because 80 percent of all outpatient, in-network medical/surgical benefits are subject to a copayment. Moreover, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to a copayment (for the $10 copayment, 25%; for the $15 copayment, 25%; for the $20 copayment, 37.5%; and for the $50 copayment, 12.5%). The plan can combine any levels of copayment, including the highest levels, to determine the predominant level that can be applied to mental health or substance use disorder benefits. If the plan combines the highest levels of copayment, the combined projected payments for the two highest copayment levels, the $50 copayment and the $20 copayment, are not more than one-half of the outpatient, in-network medical/surgical benefits subject to a copayment because they are exactly one-half ($300x + $100x = $400x; $400x/$800x = 50%). The combined projected payments for the three highest copayment levels—the $50 copayment, the $20 copayment, and the $15 copayment—are more than one-half of the outpatient, in-network medical/surgical benefits subject to the copayments ($100x + $300x + $200x = $600x; $600x/$800x = 75%). Thus, the plan may not impose any copayment on outpatient, in-network mental health or substance use disorder benefits that

is more restrictive than the least restrictive copayment in the combination, the $15 copayment.

Example 3. (i) *Facts.* A plan imposes a $250 deductible on all medical/surgical benefits for self-only coverage and a $500 deductible on all medical/surgical benefits for family coverage. The plan has no network of providers. For all medical/surgical benefits, the plan imposes a coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan has no network of providers, all benefits are provided out-of-network. Because self-only and family coverage are subject to different deductibles, whether the deductible applies to substantially all medical/surgical benefits is determined separately for self-only medical/surgical benefits and family medical/surgical benefits. Because the coinsurance is applied without regard to coverage units, the predominant coinsurance that applies to substantially all medical/surgical benefits is determined without regard to coverage units.

Example 4. (i) *Facts.* A plan applies the following financial requirements for prescription drug benefits. The requirements are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits. Moreover, the process for certifying a particular drug as ''generic'', ''preferred brand name'', ''non-preferred brand name'', or ''specialty'' complies with the rules of paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations).

	Tier 1	Tier 2	Tier 3	Tier 4
Tier description	Generic drugs	Preferred brand name drugs	Non-preferred brand name drugs (which may have Tier 1 or Tier 2 alternatives)	Specialty drugs
Percent paid by plan	90%	80%	60%	50%

(ii) *Conclusion.* In this *Example 4,* the financial requirements that apply to prescription drug benefits are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits; the process for certifying drugs in different tiers complies with paragraph (c)(4) of this section; and the bases for establishing different levels or types of financial requirements are reasonable. The financial requirements applied to prescription drug benefits do not violate the parity requirements of this paragraph (c)(3).

Example 5. (i) *Facts.* A plan has two-tiers of network of providers: a preferred provider tier and a participating provider tier. Providers are placed in either the preferred tier or participating tier based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section, such as accreditation, quality and performance measures (including customer feedback), and relative reimbursement rates. Furthermore, provider tier placement is determined without regard to whether a provider specializes in the treatment of mental health conditions or substance use disorders, or medical/surgical conditions. The plan divides the in-network classifications into two sub-classifications (in-network/preferred and in-network/participating). The plan does not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(ii) *Conclusion.* In this *Example 5,* the division of in-network benefits into sub-classifications that reflect the preferred and participating provider tiers does not violate the parity requirements of this paragraph (c)(3).

Example 6. (i) *Facts.* With respect to outpatient, in-network benefits, a plan imposes a $25 copayment for office visits and a 20 percent coinsurance requirement for outpatient surgery. The plan divides the outpatient, in-network classification into two sub-classifications (in-network office visits and all other outpatient, in-network items and services). The plan or issuer does not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(ii) *Conclusion.* In this *Example 6,* the division of outpatient, in-network benefits into sub-classifications for office visits and all other outpatient, in-network items and services does not violate the parity requirements of this paragraph (c)(3).

Example 7. (i) *Facts.* Same facts as *Example 6,* but for purposes of determining parity, the plan divides the outpatient, in-network classification into outpatient, in-network generalists and outpatient, in-network specialists.

(ii) *Conclusion.* In this *Example 7,* the division of outpatient, in-network benefits into any sub-classifications other than office visits and all other outpatient items and services violates the requirements of paragraph (c)(3)(iii)(C) of this section.

(v) *No separate cumulative financial requirements or cumulative quantitative treatment limitations*—(A) A group health plan (or health insurance coverage offered in connection with a group health plan) may not apply any cumulative financial requirement or cumulative quantitative treatment limitation for mental health or substance use disorder benefits in a classification that accumulates separately from any established for medical/surgical benefits in the same classification.

(B) The rules of this paragraph (c)(3)(v) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan imposes a combined annual $500 deductible on all medical/surgical, mental health, and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 1,* the combined annual deductible complies with the requirements of this paragraph (c)(3)(v).

Example 2. (i) *Facts.* A plan imposes an annual $250 deductible on all medical/surgical benefits and a separate annual $250 deductible on all mental health and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 2,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 3. (i) *Facts.* A plan imposes an annual $300 deductible on all medical/surgical benefits and a separate annual $100 deductible on all mental health or substance use disorder benefits.

(ii) *Conclusion.* In this *Example 3,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 4. (i) *Facts.* A plan generally imposes a combined annual $500 deductible on all benefits (both medical/surgical benefits and mental health and substance use disorder benefits) except prescription drugs. Certain benefits, such as preventive care, are provided without regard to the deductible. The imposition of other types of financial requirements or treatment limitations varies with each classification. Using reasonable methods, the plan projects its payments for medical/surgical benefits in each classification for the upcoming year as follows:

Classification	Benefits subject to deductible	Total benefits	Percent subject to deductible
Inpatient, in-network	$1,800x	$2,000x	90
Inpatient, out-of-network	1,000x	1,000x	100
Outpatient, in-network	1,400x	2,000x	70
Outpatient, out-of-network	1,880x	2,000x	94
Emergency care	300x	500x	60

(ii) *Conclusion.* In this *Example 4,* the two-thirds threshold of the substantially all standard is met with respect to each classification except emergency care because in each of those other classifications at least two-thirds of medical/surgical benefits are subject to the $500 deductible. Moreover, the $500 deductible is the predominant level in each of those other classifications because it is the only level. However, emergency care mental health and substance use disorder benefits cannot be subject to the $500 deductible because it does not apply to substantially all emergency care medical/surgical benefits.

(4) *Nonquantitative treatment limitations*—(i) *General rule.* A group health plan (or health insurance coverage) may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification.

(ii) *Illustrative list of nonquantitative treatment limitations.* Nonquantitative treatment limitations include—

(A) Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(B) Formulary design for prescription drugs;

(C) For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;

(D) Standards for provider admission to participate in a network, including reimbursement rates;

(E) Plan methods for determining usual, customary, and reasonable charges;

(F) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);

(G) Exclusions based on failure to complete a course of treatment; and

(H) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.

(iii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A plan requires prior authorization from the plan's utilization reviewer that a treatment is medically necessary for all inpatient medical/surgical benefits and for all inpatient mental health and substance use disorder benefits. In practice, inpatient benefits for medical/surgical conditions are routinely approved for seven days, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan. On the other hand, for inpatient mental health and substance use disorder benefits, routine approval is given only for one day, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan.

(ii) *Conclusion.* In this Example 1, the plan violates the rules of this paragraph (c)(4) because it is applying a stricter nonquantitative treatment limitation in practice to mental health and substance use disorder benefits than is applied to medical/surgical benefits.

Example 2. (i) *Facts.* A plan applies concurrent review to inpatient care where there are high levels of variation in length of stay (as measured by a coefficient of variation exceeding 0.8). In practice, the application of this standard affects 60 percent of mental health conditions and substance use disorders, but only 30 percent of medical/surgical conditions.

(ii) *Conclusion.* In this *Example 2,* the plan complies with the rules of this paragraph (c)(4) because the evidentiary standard used by the plan is applied no more stringently for mental health and substance use disorder benefits than for medical/surgical benefits, even though it results in an overall difference in the application of concurrent review for mental health conditions or substance use disorders than for medical/surgical conditions.

Example 3. (i) *Facts.* A plan requires prior approval that a course of treatment is medically necessary for outpatient, in-network medical/surgical, mental health, and substance use disorder benefits and uses comparable criteria in determining whether a course of treatment is medically necessary. For mental health and substance use disorder treatments that do not have prior approval, no benefits will be paid; for medical/surgical treatments that do not have prior approval, there will only be a 25 percent reduction in the benefits the plan would otherwise pay.

(ii) *Conclusion.* In this *Example 3,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical necessity—is applied both to mental health and substance use disorder benefits and to medical/surgical benefits for outpatient, in-network services, it is not applied in a comparable way. The penalty for failure to obtain prior approval for mental health and substance use disorder benefits is not comparable to the penalty for failure to obtain prior approval for medical/surgical benefits.

Example 4. (i) *Facts.* A plan generally covers medically appropriate treatments. For both medical/surgical benefits and mental health and substance use disorder benefits, evidentiary standards used in determining whether a treatment is medically appropriate (such as the number of visits or days of coverage) are based on recommendations made by panels of experts with appropriate training and experience in the fields of medicine involved. The evidentiary standards are applied in a manner that is based on clinically appropriate standards of care for a condition.

(ii) *Conclusion.* In this *Example 4,* the plan complies with the rules of this paragraph (c)(4) because the processes for developing the evidentiary standards used to determine medical appropriateness and the application of these standards to mental health and substance use disorder benefits are comparable to and are applied no more stringently than for medical/surgical benefits. This is the result even if the application of the evidentiary standards does not result in similar numbers of visits, days of coverage, or other benefits utilized for mental health conditions or substance use disorders as it does for any particular medical/surgical condition.

Example 5. (i) *Facts.* A plan generally covers medically appropriate treatments. In determining whether prescription drugs are medically appropriate, the plan automatically excludes coverage for antidepressant drugs that are given a black box warning label by the Food and Drug Administration (indicating the drug carries a significant risk of serious adverse effects). For

other drugs with a black box warning (including those prescribed for other mental health conditions and substance use disorders, as well as for medical/surgical conditions), the plan will provide coverage if the prescribing physician obtains authorization from the plan that the drug is medically appropriate for the individual, based on clinically appropriate standards of care.

(ii) *Conclusion.* In this *Example 5,* the plan violates the rules of this paragraph (c)(4). Although the standard for applying a nonquantitative treatment limitation is the same for both mental health and substance use disorder benefits and medical/surgical benefits—whether a drug has a black box warning—it is not applied in a comparable manner. The plan's unconditional exclusion of antidepressant drugs given a black box warning is not comparable to the conditional exclusion for other drugs with a black box warning.

Example 6. (i) *Facts.* An employer maintains both a major medical plan and an employee assistance program (EAP). The EAP provides, among other benefits, a limited number of mental health or substance use disorder counseling sessions. Participants are eligible for mental health or substance use disorder benefits under the major medical plan only after exhausting the counseling sessions provided by the EAP. No similar exhaustion requirement applies with respect to medical/surgical benefits provided under the major medical plan.

(ii) *Conclusion.* In this *Example 6,* limiting eligibility for mental health and substance use disorder benefits only after EAP benefits are exhausted is a nonquantitative treatment limitation subject to the parity requirements of this paragraph (c). Because no comparable requirement applies to medical/surgical benefits, the requirement may not be applied to mental health or substance use disorder benefits.

Example 7. (i) *Facts.* Training and State licensing requirements often vary among types of providers. A plan applies a general standard that any provider must meet the highest licensing requirement related to supervised clinical experience under applicable State law in order to participate in the plan's provider network. Therefore, the plan requires master's-level mental health therapists to have post-degree, supervised clinical experience but does not impose this requirement on master's-level general medical providers because the scope of their licensure under applicable State law does require clinical experience. In addition, the plan does not require post-degree, supervised clinical experience for psychiatrists or Ph.D. level psychologists since their licensing already requires supervised training.

(ii) *Conclusion.* In this *Example 7,* the plan complies with the rules of this paragraph (c)(4). The requirement that master's-level mental health therapists must have supervised clinical experience to join the network is permissible, as long as the plan consistently applies the same standard to all providers even though it may have a disparate impact on certain mental health providers.

Example 8. (i) *Facts.* A plan considers a wide array of factors in designing medical management techniques for both mental health and substance use disorder benefits and medical/surgical benefits, such as cost of treatment; high cost growth; variability in cost and quality; elasticity of demand; provider discretion in determining diagnosis, or type or length of treatment; clinical efficacy of any proposed treatment or service; licensing and accreditation of providers; and claim types with a high percentage of fraud. Based on application of these factors in a comparable fashion, prior authorization is required for some (but not all) mental health and substance use disorder benefits, as well as for some medical/surgical benefits, but not for others. For example, the plan requires prior authorization for: outpatient surgery; speech, occupational, physical, cognitive and behavioral therapy extending for more than six months; durable medical equipment; diagnostic imaging; skilled nursing visits; home infusion therapy; coordinated home care; pain management; high-risk prenatal care; delivery by cesarean section; mastectomy; prostate cancer treatment; narcotics prescribed for more than seven days; and all inpatient services beyond 30 days. The evidence considered in developing its medical management techniques includes consideration of a wide array of recognized medical literature and professional standards and protocols (including comparative effectiveness studies and clinical trials). This evidence and how it was used to develop these medical management techniques is also well documented by the plan.

(ii) *Conclusion.* In this *Example 8,* the plan complies with the rules of this paragraph (c)(4). Under the terms of the plan as written and in operation, the processes, strategies, evidentiary standards, and other factors considered by the plan in implementing its prior authorization requirement with respect to mental health and substance use disorder benefits are comparable to, and applied no more stringently than, those applied with respect to medical/surgical benefits.

Example 9. (i) *Facts.* A plan generally covers medically appropriate treatments. The plan automatically excludes coverage for inpatient substance use disorder treatment in any setting outside of a hospital (such as a freestanding or residential treatment center). For inpatient treatment outside of a hospital for other conditions (including freestanding or residential treatment centers prescribed for mental health conditions, as well as for medical/surgical conditions), the plan will provide coverage if the prescribing physician obtains authorization from the plan that the inpatient treatment is medically appropriate for the individual, based on clinically appropriate standards of care.

(ii) *Conclusion.* In this *Example 9,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical appropriateness—is applied to both mental health and substance use disorder benefits and medical/surgical benefits, the plan's unconditional exclusion of substance use disorder treatment in any setting outside of a hospital is not comparable to the conditional exclusion of inpatient treatment outside of a hospital for other conditions.

Example 10. (i) *Facts.* A plan generally provides coverage for medically appropriate medical/surgical benefits as well as mental health and substance use disorder benefits. The plan excludes coverage for inpatient, out-of-network treatment of chemical dependency when obtained outside of the State where the policy is written. There is no similar exclusion for medical/surgical benefits within the same classification.

(ii) *Conclusion.* In this Example 10, the plan violates the rules of this paragraph (c)(4). The plan is imposing a nonquantitative treatment limitation that restricts benefits based on geographic location. Because there is no comparable exclusion that applies to medical/surgical benefits, this exclusion may not be applied to mental health or substance use disorder benefits.

Example 11. (i) *Facts.* A plan requires prior authorization for all outpatient mental health and substance use disorder services after the ninth visit and will only approve up to five additional visits per authorization. With respect to outpatient medical/surgical benefits, the plan allows an initial visit without prior authorization. After the initial visit, the plan pre-approves benefits based on the individual treatment plan recommended by the attending provider based on that individual's specific medical condition. There is no explicit, predetermined cap on the amount of additional visits approved per authorization.

(ii) *Conclusion.* In this *Example 11,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—prior authorization to determine medical appropriateness—is applied to both mental health and substance use disorder benefits and medical/surgical benefits for outpatient services, it is not applied in a comparable way. While the plan is more generous with respect to the number of visits initially provided without pre-authorization for mental health benefits, treating all mental health conditions and substance use disorders in the same manner, while providing for individualized treatment of medical conditions, is not a comparable application of this nonquantitative treatment limitation.

(5) *Exemptions.* The rules of this paragraph (c) do not apply if a group health plan (or health insurance coverage) satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(d) *Availability of plan information*—(1) *Criteria for medical necessity determinations.* The criteria for medical necessity determinations made under a group health plan with respect to mental health or substance use disorder benefits (or health insurance coverage offered in connection with the plan with respect to such benefits) must be made available by the plan administrator (or the health insurance issuer offering such coverage) to any current or potential participant, beneficiary, or contracting provider upon request.

(2) *Reason for any denial.* The reason for any denial under a group health plan

(or health insurance coverage offered in connection with such plan) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available by the plan administrator (or the health insurance issuer offering such coverage) to the participant or beneficiary in accordance with this paragraph (d)(2).

(i) *Plans subject to ERISA.* If a plan is subject to ERISA, it must provide the reason for the claim denial in a form and manner consistent with the requirements of 29 CFR 2560.503–1 for group health plans.

(ii) *Plans not subject to ERISA.* If a plan is not subject to ERISA, upon the request of a participant or beneficiary the reason for the claim denial must be provided within a reasonable time and in a reasonable manner. For this purpose, a plan that follows the requirements of 29 CFR 2560.503–1 for group health plans complies with the requirements of this paragraph (d)(2)(ii).

(3) *Provisions of other law.* Compliance with the disclosure requirements in paragraphs (d)(1) and (d)(2) of this section is not determinative of compliance with any other provision of applicable Federal or State law. In particular, in addition to those disclosure requirements, provisions of other applicable law require disclosure of information relevant to medical/surgical, mental health, and substance use disorder benefits. For example, ERISA section 104 and 29 CFR 2520.104b–1 provide that, for plans subject to ERISA, instruments under which the plan is established or operated must generally be furnished to plan participants within 30 days of request. Instruments under which the plan is established or operated include documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan. In addition, 29 CFR 2560.503–1 and 29 CFR 2590.715–2719 set forth rules regarding claims and appeals, including the right of claimants (or their authorized representative) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits. This includes documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan.

(e) *Applicability*—(1) *Group health plans.* The requirements of this section apply to a group health plan offering medical/surgical benefits and mental health or substance use disorder benefits. If, under an arrangement or arrangements to provide medical care benefits by an employer or employee organization (including for this purpose a joint board of trustees of a multiemployer trust affiliated with one or more multiemployer plans), any participant (or beneficiary) can simultaneously receive coverage for medical/surgical benefits and coverage for mental health or substance use disorder benefits, then the requirements of this section (including the exemption provisions in paragraph (g) of this section) apply separately with respect to each combination of medical/surgical benefits and of mental health or substance use disorder benefits that any participant (or beneficiary) can simultaneously receive from that employer's or employee organization's arrangement or arrangements to provide medical care benefits, and all such combinations are considered for purposes of this section to be a single group health plan.

(2) *Health insurance issuers.* The requirements of this section apply to a health insurance issuer offering health insurance coverage for mental health or substance use disorder benefits in connection with a group health plan subject to paragraph (e)(1) of this section.

(3) *Scope.* This section does not—

(i) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) to provide any mental health benefits or substance use disorder benefits, and the provision of benefits by a plan (or health insurance coverage) for one or more mental health conditions or substance use disorders does not require the plan or health insurance coverage under this section to provide benefits for any other mental health condition or substance use disorder;

(ii) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) that provides coverage for mental health or substance use disorder benefits only to the extent required under PHS Act section 2713 to provide additional mental health or substance use disorder benefits in any classification in accordance with this section; or

(iii) Affect the terms and conditions relating to the amount, duration, or scope of mental health or substance use disorder benefits under the plan (or health insurance coverage) except as specifically provided in paragraphs (b) and (c) of this section.

(4) *Coordination with EHB requirements.* Nothing in paragraph (f) or (g) of this section changes the requirements of 45 CFR 147.150 and 45 CFR 156.115, providing that a health insurance issuer offering non-grandfathered health insurance coverage in the individual or small group market providing mental health and substance use disorder services, including behavioral health treatment services, as part of essential health benefits required under 45 CFR 156.110(a)(5) and 156.115(a), must comply with the provisions of 45 CFR 146.136 to satisfy the requirement to provide essential health benefits.

(f) *Small employer exemption*—(1) *In general.* The requirements of this section do not apply to a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer. For purposes of this paragraph (f), 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 two (or one in the case of an employer residing in a State that permits small groups to include a single individual) but not more than 50 employees on business days during the preceding calendar year. See section 9831(a) and § 54.9831–1(b), which provide that this section (and certain other sections) does not apply to any group health plan for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (f)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ

on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(g) *Increased cost exemption*—(1) *In general.* If the application of this section to a group health plan (or health insurance coverage offered in connection with such plans) results in an increase for the plan year involved of the actual total cost of coverage with respect to medical/surgical benefits and mental health and substance use disorder benefits as determined and certified under paragraph (g)(3) of this section by an amount that exceeds the applicable percentage described in paragraph (g)(2) of this section of the actual total plan costs, the provisions of this section shall not apply to such plan (or coverage) during the following plan year, and such exemption shall apply to the plan (or coverage) for one plan year. An employer or issuer may elect to continue to provide mental health and substance use disorder benefits in compliance with this section with respect to the plan or coverage involved regardless of any increase in total costs.

(2) *Applicable percentage.* With respect to a plan or coverage, the applicable percentage described in this paragraph (g) is—

(i) 2 percent in the case of the first plan year in which this section is applied to the plan or coverage; and

(ii) 1 percent in the case of each subsequent plan year.

(3) *Determinations by actuaries*—(i) Determinations as to increases in actual costs under a plan or coverage that are attributable to implementation of the requirements of this section shall be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. All such determinations must be based on the formula specified in paragraph (g)(4) of this section and shall be in a written report prepared by the actuary.

(ii) The written report described in paragraph (g)(3)(i) of this section shall be maintained by the group health plan or health insurance issuer, along with all supporting documentation relied upon by the actuary, for a period of six years following the notification made under paragraph (g)(6) of this section.

(4) *Formula.* The formula to be used to make the determination under paragraph (g)(3)(i) of this section is expressed mathematically as follows:

$$[(E_1 - E_0)/T_0] - D > k$$

(i) E_1 is the actual total cost of coverage with respect to mental health and substance use disorder benefits for the base period, including claims paid by the plan or issuer with respect to mental health and substance use disorder benefits and administrative costs (amortized over time) attributable to providing these benefits consistent with the requirements of this section.

(ii) E_0 is the actual total cost of coverage with respect to mental health and substance use disorder benefits for the length of time immediately before the base period (and that is equal in length to the base period), including claims paid by the plan or issuer with respect to mental health and substance use disorder benefits and administrative costs (amortized over time) attributable to providing these benefits.

(iii) T_0 is the actual total cost of coverage with respect to all benefits during the base period.

(iv) k is the applicable percentage of increased cost specified in paragraph (g)(2) of this section that will be expressed as a fraction for purposes of this formula.

(v) D is the average change in spending that is calculated by applying the formula $(E_1 - E_0)/T_0$ to mental health and substance use disorder spending in each of the five prior years and then calculating the average change in spending.

(5) *Six month determination.* If a group health plan or health insurance issuer seeks an exemption under this paragraph (g), determinations under paragraph (g)(3) of this section shall be made after such plan or coverage has complied with this section for at least the first 6 months of the plan year involved.

(6) *Notification.* A group health plan or health insurance issuer that, based on the certification described under paragraph (g)(3) of this section, qualifies for an exemption under this paragraph (g), and elects to implement the exemption, must notify participants and beneficiaries covered under the plan, the Secretary, and the appropriate State agencies of such election.

(i) *Participants and beneficiaries*—(A) *Content of notice.* The notice to participants and beneficiaries must include the following information:

(*1*) A statement that the plan or issuer is exempt from the requirements of this section and a description of the basis for the exemption.

(*2*) The name and telephone number of the individual to contact for further information.

(*3*) The plan or issuer name and plan number (PN).

(*4*) The plan administrator's name, address, and telephone number.

(*5*) For single-employer plans, the plan sponsor's name, address, and telephone number (if different from paragraph (g)(6)(i)(A)(*3*) of this section) and the plan sponsor's employer identification number (EIN).

(*6*) The effective date of such exemption.

(*7*) A statement regarding the ability of participants and beneficiaries to contact the plan administrator or health insurance issuer to see how benefits may be affected as a result of the plan's or issuer's election of the exemption.

(*8*) A statement regarding the availability, upon request and free of charge, of a summary of the information on which the exemption is based (as required under paragraph (g)(6)(i)(D) of this section).

(B) *Use of summary of material reductions in covered services or benefits.* A plan or issuer may satisfy the requirements of paragraph (g)(6)(i)(A) of this section by providing participants and beneficiaries (in accordance with paragraph (g)(6)(i)(C) of this section) with a summary of material reductions in covered services or benefits consistent with 29 CFR 2520.104b–3(d) that also includes the information specified in paragraph (g)(6)(i)(A) of this section. However, in all cases, the exemption is not effective until 30 days after notice has been sent.

(C) *Delivery.* The notice described in this paragraph (g)(6)(i) is required to be provided to all participants and beneficiaries. The notice may be furnished by any method of delivery that satisfies the requirements of section 104(b)(1) of ERISA (29 U.S.C. 1024(b)(1)) and its implementing regulations (for example, first-class mail). If the notice is provided to the participant and any beneficiaries at the participant's last known address, then the requirements of this paragraph (g)(6)(i) are satisfied with respect to the participant and all beneficiaries residing at that address. If a beneficiary's last known address is different from the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

(D) *Availability of documentation.* The plan or issuer must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based. (For purposes of this paragraph (g), an individual who is not a participant or beneficiary and who presents a notice described in paragraph (g)(6)(i) of this section is considered to be a representative. A representative may request the summary of information by

providing the plan a copy of the notice provided to the participant under paragraph (g)(6)(i) of this section with any personally identifiable information redacted.) The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan or coverage absent amendments required to comply with paragraphs (b) and (c) of this section, the administrative costs related to those claims, and other administrative costs attributable to complying with the requirements of this section. In no event should the summary of information include any personally identifiable information.

(ii) *Federal agencies*—(A) *Content of notice.* The notice to the Secretary must include the following information:

(*1*) A description of the number of covered lives under the plan (or coverage) involved at the time of the notification, and as applicable, at the time of any prior election of the cost exemption under this paragraph (g) by such plan (or coverage);

(*2*) For both the plan year upon which a cost exemption is sought and the year prior, a description of the actual total costs of coverage with respect to medical/surgical benefits and mental health and substance use disorder benefits; and

(*3*) For both the plan year upon which a cost exemption is sought and the year prior, the actual total costs of coverage with respect to mental health and substance use disorder benefits under the plan.

(B) *Reporting with respect to church plans.* A church plan (as defined in section 414(e)) claiming the exemption of this paragraph (g) for any benefit package, must provide notice to the Department of the Treasury. This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (g)(6)(ii)(A) of this section identifying the benefit package to which the exemption applies.

(C) *Reporting with respect to ERISA plans.* See 29 CFR 2590.712(g)(6)(ii) for delivery with respect to ERISA plans.

(iii) *Confidentiality.* A notification to the Secretary under this paragraph (g)(6) shall be confidential. The Secretary shall make available, upon request and not more than on an annual basis, an anonymous itemization of each notification that includes—

(A) A breakdown of States by the size and type of employers submitting such notification; and

(B) A summary of the data received under paragraph (g)(6)(ii) of this section.

(iv) *Audits.* The Secretary may audit the books and records of a group health plan or a health insurance issuer relating to an exemption, including any actuarial reports, during the 6 year period following notification of such exemption under paragraph (g)(6) of this section. A State agency receiving a notification under paragraph (g)(6) of this section may also conduct such an audit with respect to an exemption covered by such notification.

(h) *Sale of nonparity health insurance coverage.* A health insurance issuer may not sell a policy, certificate, or contract of insurance that fails to comply with paragraph (b) or (c) of this section, except to a plan for a year for which the plan is exempt from the requirements of this section because the plan meets the requirements of paragraph (f) or (g) of this section.

(i) *Applicability dates*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to group health plans and health insurance issuers offering group health insurance coverage on the first day of the first plan year beginning on or after July 1, 2014.

(2) *Special effective date for certain collectively-bargained plans.* For a group health plan maintained pursuant to one or more collective bargaining agreements ratified before October 3, 2008, the requirements of this section do not apply to the plan (or health insurance coverage offered in connection with the plan) for plan years beginning before the date on which the last of the collective bargaining agreements terminates (determined without regard to any extension agreed to after October 3, 2008).

Employee Benefits Security Administration

29 CFR Chapter XXV

29 CFR Part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority citation for Part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 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. 3765; Public Law 110–460, 122 Stat. 5123; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

■ 2. Section 2590.712 is revised to read as follows:

§ 2590.712 Parity in mental health and substance use disorder benefits.

(a) *Meaning of terms.* For purposes of this section, except where the context clearly indicates otherwise, the following terms have the meanings indicated:

Aggregate lifetime dollar limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan (or health insurance coverage offered in connection with such a plan) for any coverage unit.

Annual dollar limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a group health plan (or health insurance coverage offered in connection with such a plan) for any coverage unit.

Coverage unit means coverage unit as described in paragraph (c)(1)(iv) of this section.

Cumulative financial requirements are financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. (However, cumulative financial requirements do not include aggregate lifetime or annual dollar limits because these two terms are excluded from the meaning of financial requirements.)

Cumulative quantitative treatment limitations are treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits.

Financial requirements include deductibles, copayments, coinsurance, or out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Medical/surgical benefits means benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the plan or health insurance coverage and in accordance with applicable Federal and State law, but does not include mental health or substance use disorder benefits. Any condition defined by the plan or coverage as being or as not being a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the International Classification of Diseases (ICD) or State guidelines).

Mental health benefits means benefits with respect to items or services for mental health conditions, as defined under the terms of the plan or health insurance coverage and in accordance with applicable Federal and State law. Any condition defined by the plan or coverage as being or as not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the most current version of the ICD, or State guidelines).

Substance use disorder benefits means benefits with respect to items or services for substance use disorders, as defined under the terms of the plan or health insurance coverage and in accordance with applicable Federal and State law. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the DSM, the most current version of the ICD, or State guidelines).

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as 50 outpatient visits per year), and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage. (See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.) A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation for purposes of this definition.

(b) *Parity requirements with respect to aggregate lifetime and annual dollar limits.* This paragraph (b) details the application of the parity requirements with respect to aggregate lifetime and annual dollar limits. This paragraph (b) does not address the provisions of PHS Act section 2711, as incorporated in ERISA section 715 and Code section 9815, which prohibit imposing lifetime and annual limits on the dollar value of essential health benefits. For more information, see 29 CFR 2590.715–2711.

(1) *General*—(i) *General parity requirement.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits must comply with paragraph (b)(2), (b)(3), or (b)(5) of this section.

(ii) *Exception.* The rule in paragraph (b)(1)(i) of this section does not apply if a plan (or health insurance coverage) satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan (or health insurance coverage) does not include an aggregate lifetime or annual dollar limit on any medical/surgical benefits or includes an aggregate lifetime or annual dollar limit that applies to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual dollar limit, respectively, on mental health or substance use disorder benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan (or health insurance coverage) includes an aggregate lifetime or annual dollar limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual dollar limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health or substance use disorder benefits in a manner that does not distinguish between the medical/surgical benefits and mental health or substance use disorder benefits; or

(ii) Not include an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is less than the aggregate lifetime or annual dollar limit, respectively, on medical/surgical benefits. (For cumulative limits other than aggregate lifetime or annual dollar limits, see paragraph (c)(3)(v) of this section prohibiting separately accumulating cumulative financial requirements or cumulative quantitative treatment limitations.)

(4) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to an aggregate lifetime or annual dollar limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual dollar limits). Any reasonable method may be used to determine whether the dollar amount expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(5) *Plan not described in paragraph (b)(2) or (b)(3) of this section*—(i) *In general.* A group health plan (or health insurance coverage) that is not described in paragraph (b)(2) or (b)(3) of this section with respect to aggregate lifetime or annual dollar limits on medical/surgical benefits, must either—

(A) Impose no aggregate lifetime or annual dollar limit, as appropriate, on mental health or substance use disorder benefits; or

(B) Impose an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is no less than an average limit calculated for medical/surgical benefits in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual dollar limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(5)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated dollar limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(5), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(4) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(c) *Parity requirements with respect to financial requirements and treatment limitations*—(1) *Clarification of terms*—(i) *Classification of benefits.* When reference is made in this paragraph (c) to a classification of benefits, the term ''classification'' means a classification as described in paragraph (c)(2)(ii) of this section.

(ii) *Type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a type of financial requirement or treatment limitation, the reference to type means

its nature. Different types of financial requirements include deductibles, copayments, coinsurance, and out-of-pocket maximums. Different types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits. See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.

(iii) *Level of a type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a level of a type of financial requirement or treatment limitation, level refers to the magnitude of the type of financial requirement or treatment limitation. For example, different levels of coinsurance include 20 percent and 30 percent; different levels of a copayment include $15 and $20; different levels of a deductible include $250 and $500; and different levels of an episode limit include 21 inpatient days per episode and 30 inpatient days per episode.

(iv) *Coverage unit.* When reference is made in this paragraph (c) to a coverage unit, coverage unit refers to the way in which a plan (or health insurance coverage) groups individuals for purposes of determining benefits, or premiums or contributions. For example, different coverage units include self-only, family, and employee-plus-spouse.

(2) *General parity requirement*—(i) *General rule.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation. The application of the rules of this paragraph (c)(2) to financial requirements and quantitative treatment limitations is addressed in paragraph (c)(3) of this section; the application of the rules of this paragraph (c)(2) to nonquantitative treatment limitations is addressed in paragraph (c)(4) of this section.

(ii) *Classifications of benefits used for applying rules*—(A) *In general.* If a plan (or health insurance coverage) provides mental health or substance use disorder benefits in any classification of benefits described in this paragraph (c)(2)(ii), mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided. In determining the classification in which a particular benefit belongs, a plan (or health insurance issuer) must apply the same standards to medical/surgical benefits and to mental health or substance use disorder benefits. To the extent that a plan (or health insurance coverage) provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in the classification, the rules of this paragraph (c) apply separately with respect to that classification for all financial requirements or treatment limitations (illustrated in examples in paragraph (c)(2)(ii)(C) of this section). The following classifications of benefits are the only classifications used in applying the rules of this paragraph (c):

(*1*) *Inpatient, in-network.* Benefits furnished on an inpatient basis and within a network of providers established or recognized under a plan or health insurance coverage. See special rules for plans with multiple network tiers in paragraph (c)(3)(iii) of this section.

(*2*) *Inpatient, out-of-network.* Benefits furnished on an inpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes inpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(*3*) *Outpatient, in-network.* Benefits furnished on an outpatient basis and within a network of providers established or recognized under a plan or health insurance coverage. See special rules for office visits and plans with multiple network tiers in paragraph (c)(3)(iii) of this section.

(*4*) *Outpatient, out-of-network.* Benefits furnished on an outpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes outpatient benefits under a plan (or health insurance coverage) that has no network of providers. See special rules for office visits in paragraph (c)(3)(iii) of this section.

(*5*) *Emergency care.* Benefits for emergency care.

(*6*) *Prescription drugs.* Benefits for prescription drugs. See special rules for multi-tiered prescription drug benefits in paragraph (c)(3)(iii) of this section.

(B) *Application to out-of-network providers.* See paragraph (c)(2)(ii)(A) of this section, under which a plan (or health insurance coverage) that provides mental health or substance use disorder benefits in any classification of benefits must provide mental health or substance use disorder benefits in every classification in which medical/surgical benefits are provided, including out-of-network classifications.

(C) *Examples.* The rules of this paragraph (c)(2)(ii) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A group health plan offers inpatient and outpatient benefits and does not contract with a network of providers. The plan imposes a $500 deductible on all benefits. For inpatient medical/surgical benefits, the plan imposes a coinsurance requirement. For outpatient medical/surgical benefits, the plan imposes copayments. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 1,* because the plan has no network of providers, all benefits provided are out-of-network. Because inpatient, out-of-network medical/surgical benefits are subject to separate financial requirements from outpatient, out-of-network medical/surgical benefits, the rules of this paragraph (c) apply separately with respect to any financial requirements and treatment limitations, including the deductible, in each classification.

Example 2. (i) *Facts.* A plan imposes a $500 deductible on all benefits. The plan has no network of providers. The plan generally imposes a 20 percent coinsurance requirement with respect to all benefits, without distinguishing among inpatient, outpatient, emergency care, or prescription drug benefits. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 2,* because the plan does not impose separate financial requirements (or treatment limitations) based on classification, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance across all benefits.

Example 3. (i) *Facts.* Same facts as *Example 2,* except the plan exempts emergency care benefits from the 20 percent coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan imposes separate financial requirements based on classifications, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance separately for—

(A) Benefits in the emergency care classification; and

(B) All other benefits.

Example 4. (i) *Facts.* Same facts as *Example 2,* except the plan also imposes a preauthorization requirement for all inpatient treatment in order for benefits to be paid. No such requirement applies to outpatient treatment.

(ii) *Conclusion.* In this *Example 4,* because the plan has no network of providers, all benefits provided are out-of-network. Because the plan imposes a separate treatment limitation based on classifications, the rules of this paragraph (c) apply with respect to the deductible and coinsurance separately for—

(A) Inpatient, out-of-network benefits; and

(B) All other benefits.

(3) *Financial requirements and quantitative treatment limitations*—(i) *Determining ''substantially all'' and ''predominant''*—(A) *Substantially all.* For purposes of this paragraph (c), a type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. (For this purpose, benefits expressed as subject to a zero level of a type of financial requirement are treated as benefits not subject to that type of financial requirement, and benefits expressed as subject to a quantitative treatment limitation that is unlimited are treated as benefits not subject to that type of quantitative treatment limitation.) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to mental health or substance use disorder benefits in that classification.

(B) *Predominant*—(*1*) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification as determined under paragraph (c)(3)(i)(A) of this section, the level of the financial requirement or quantitative treatment limitation that is considered the predominant level of that type in a classification of benefits is the level that applies to more than one-half of medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation.

(*2*) If, with respect to a type of financial requirement or quantitative treatment limitation that applies to at least two-thirds of all medical/surgical benefits in a classification, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to the financial requirement or quantitative treatment limitation, the plan (or health insurance issuer) may combine levels until the combination of levels applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in the classification. The least restrictive level within the combination is considered the predominant level of that type in the classification. (For this purpose, a plan may combine the most restrictive levels first, with each less restrictive level added to the combination until the combination applies to more than one-half of the benefits subject to the financial requirement or treatment limitation.)

(C) *Portion based on plan payments.* For purposes of this paragraph (c), the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the financial requirement or quantitative treatment limitation).

(D) *Clarifications for certain threshold requirements.* For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied. For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied. Similar rules apply for any other thresholds at which the rate of plan payment changes. (See also PHS Act section 2707(b) and Affordable Care Act section 1302(c), which establish limitations on annual deductibles for non-grandfathered health plans in the small group market and annual limitations on out-of-pocket maximums for all non-grandfathered health plans.)

(E) *Determining the dollar amount of plan payments.* Subject to paragraph (c)(3)(i)(D) of this section, any reasonable method may be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation).

(ii) *Application to different coverage units.* If a plan (or health insurance coverage) applies different levels of a financial requirement or quantitative treatment limitation to different coverage units in a classification of medical/surgical benefits, the predominant level that applies to substantially all medical/surgical benefits in the classification is determined separately for each coverage unit.

(iii) *Special rules*—(A) *Multi-tiered prescription drug benefits.* If a plan (or health insurance coverage) applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations) and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits, the plan (or health insurance coverage) satisfies the parity requirements of this paragraph (c) with respect to prescription drug benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(B) *Multiple network tiers.* If a plan (or health insurance coverage) provides benefits through multiple tiers of in-network providers (such as an in-network tier of preferred providers with more generous cost-sharing to participants than a separate in-network tier of participating providers), the plan may divide its benefits furnished on an in-network basis into sub-classifications that reflect network tiers, if the tiering is based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section (such as quality, performance, and market standards) and without regard to whether a provider provides services with respect to medical/surgical benefits or mental health or substance use disorder benefits. After the sub-classifications are established, the plan or issuer may not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in the sub-

classification using the methodology set forth in paragraph (c)(3)(i) of this section.

(C) *Sub-classifications permitted for office visits, separate from other outpatient services.* For purposes of applying the financial requirement and treatment limitation rules of this paragraph (c), a plan or issuer may divide its benefits furnished on an outpatient basis into the two sub-classifications described in this paragraph (c)(3)(iii)(C). After the sub-classifications are established, the plan or issuer may not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification using the methodology set forth in paragraph (c)(3)(i) of this section. Sub-classifications other than these special rules, such as separate sub-classifications for generalists and specialists, are not permitted. The two sub-classifications permitted under this paragraph (c)(3)(iii)(C) are:

(*1*) Office visits (such as physician visits), and

(*2*) All other outpatient items and services (such as outpatient surgery, facility charges for day treatment centers, laboratory charges, or other medical items).

(iv) *Examples.* The rules of paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) of this section are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* For inpatient, out-of-network medical/surgical benefits, a group health plan imposes five levels of coinsurance. Using a reasonable method, the plan projects its payments for the upcoming year as follows:

Coinsurance rate	0%	10%	15%	20%	30%	Total.
Projected payments	$200x	$100x	$450x	$100x	$150x	$1,000x.
Percent of total plan costs	20%	10%	45%	10%	15%	
Percent subject to coinsurance level	N/A	12.5% (100x/800x)	56.25% (450x/800x)	12.5% (100x/800x)	18.75% (150x/800x)	

The plan projects plan costs of $800x to be subject to coinsurance ($100x + $450x + $100x + $150x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to coinsurance, and 56.25 percent of the benefits subject to coinsurance are projected to be subject to the 15 percent coinsurance level.

(ii) *Conclusion.* In this *Example 1,* the two-thirds threshold of the substantially all standard is met for coinsurance because 80 percent of all inpatient, out-of-network medical/surgical benefits are subject to coinsurance. Moreover, the 15 percent coinsurance is the predominant level because it is applicable to more than one-half of inpatient, out-of-network medical/surgical benefits subject to the coinsurance requirement. The plan may not impose any level of coinsurance with respect to inpatient, out-of-network mental health or substance use disorder benefits that is more restrictive than the 15 percent level of coinsurance.

Example 2. (i) *Facts.* For outpatient, in-network medical/surgical benefits, a plan imposes five different copayment levels. Using a reasonable method, the plan projects payments for the upcoming year as follows:

Copayment amount	$0	$10	$15	$20	$50	Total.
Projected payments	$200x	$200x	$200x	$300x	$100x	$1,000x.
Percent of total plan costs	20%	20%	20%	30%	10%	
Percent subject to copayments	N/A	25% (200x/800x)	25% (200x/800x)	37.5% (300x/800x)	12.5% (100x/800x)	

The plan projects plan costs of $800x to be subject to copayments ($200x + $200x +$300x + $100x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to a copayment.

(ii) *Conclusion.* In this *Example 2,* the two-thirds threshold of the substantially all standard is met for copayments because 80 percent of all outpatient, in-network medical/surgical benefits are subject to a copayment. Moreover, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to a copayment (for the $10 copayment, 25%; for the $15 copayment, 25%; for the $20 copayment, 37.5%; and for the $50 copayment, 12.5%). The plan can combine any levels of copayment, including the highest levels, to determine the predominant level that can be applied to mental health or substance use disorder benefits. If the plan combines the highest levels of copayment, the combined projected payments for the two highest copayment levels, the $50 copayment and the $20 copayment, are not more than one-half of the outpatient, in-network medical/surgical benefits subject to a copayment because they are exactly one-half ($300x + $100x = $400x; $400x/$800x = 50%). The combined projected payments for the three highest copayment levels—the $50 copayment, the $20 copayment, and the $15 copayment—are more than one-half of the outpatient, in-network medical/surgical benefits subject to the copayments ($100x + $300x + $200x = $600x; $600x/$800x = 75%). Thus, the plan may not impose any copayment on outpatient, in-network mental health or substance use disorder benefits that is more restrictive than the least restrictive copayment in the combination, the $15 copayment.

Example 3. (i) *Facts.* A plan imposes a $250 deductible on all medical/surgical benefits for self-only coverage and a $500 deductible on all medical/surgical benefits for family coverage. The plan has no network of providers. For all medical/surgical benefits, the plan imposes a coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan has no network of providers, all benefits are provided out-of-network. Because self-only and family coverage are subject to different deductibles, whether the deductible applies to substantially all medical/surgical benefits is determined separately for self-only medical/surgical benefits and family medical/surgical benefits. Because the coinsurance is applied without regard to coverage units, the predominant coinsurance that applies to substantially all medical/surgical benefits is determined without regard to coverage units.

Example 4. (i) *Facts.* A plan applies the following financial requirements for prescription drug benefits. The requirements are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits. Moreover, the process for certifying a particular drug as ''generic'', ''preferred brand name'', ''non-preferred brand name'', or ''specialty'' complies with the rules of paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations).

	Tier 1	Tier 2	Tier 3	Tier 4
Tier description	Generic drugs	Preferred brand name drugs	Non-preferred brand name drugs (which may have Tier 1 or Tier 2 alternatives)	Specialty drugs
Percent paid by plan	90%	80%	60%	50%

(ii) *Conclusion.* In this *Example 4,* the financial requirements that apply to prescription drug benefits are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits; the process for certifying drugs in different tiers complies with paragraph (c)(4) of this section; and the bases for establishing different levels or types of financial requirements are reasonable. The financial requirements applied to prescription drug benefits do not violate the parity requirements of this paragraph (c)(3).

Example 5. (i) *Facts.* A plan has two-tiers of network of providers: a preferred provider tier and a participating provider tier. Providers are placed in either the preferred tier or participating tier based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section, such as accreditation, quality and performance measures (including customer feedback), and relative reimbursement rates. Furthermore, provider tier placement is determined without regard to whether a provider specializes in the treatment of mental health conditions or substance use disorders, or medical/surgical conditions. The plan divides the in-network classifications into two sub-classifications (in-network/preferred and in-network/participating). The plan does not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(ii) *Conclusion.* In this *Example 5,* the division of in-network benefits into sub-classifications that reflect the preferred and participating provider tiers does not violate the parity requirements of this paragraph (c)(3).

Example 6. (i) *Facts.* With respect to outpatient, in-network benefits, a plan imposes a $25 copayment for office visits and a 20 percent coinsurance requirement for outpatient surgery. The plan divides the outpatient, in-network classification into two sub-classifications (in-network office visits and all other outpatient, in-network items and services). The plan or issuer does not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(ii) *Conclusion.* In this *Example 6,* the division of outpatient, in-network benefits into sub-classifications for office visits and all other outpatient, in-network items and services does not violate the parity requirements of this paragraph (c)(3).

Example 7. (i) *Facts.* Same facts as *Example 6,* but for purposes of determining parity, the plan divides the outpatient, in-network classification into outpatient, in-network generalists and outpatient, in-network specialists.

(ii) *Conclusion.* In this *Example 7,* the division of outpatient, in-network benefits into any sub-classifications other than office visits and all other outpatient items and services violates the requirements of paragraph (c)(3)(iii)(C) of this section.

(v) *No separate cumulative financial requirements or cumulative quantitative treatment limitations*—(A) A group health plan (or health insurance coverage offered in connection with a group health plan) may not apply any cumulative financial requirement or cumulative quantitative treatment limitation for mental health or substance use disorder benefits in a classification that accumulates separately from any established for medical/surgical benefits in the same classification.

(B) The rules of this paragraph (c)(3)(v) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan imposes a combined annual $500 deductible on all medical/surgical, mental health, and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 1,* the combined annual deductible complies with the requirements of this paragraph (c)(3)(v).

Example 2. (i) *Facts.* A plan imposes an annual $250 deductible on all medical/surgical benefits and a separate annual $250 deductible on all mental health and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 2,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 3. (i) *Facts.* A plan imposes an annual $300 deductible on all medical/surgical benefits and a separate annual $100 deductible on all mental health or substance use disorder benefits.

(ii) *Conclusion.* In this *Example 3,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 4. (i) *Facts.* A plan generally imposes a combined annual $500 deductible on all benefits (both medical/surgical benefits and mental health and substance use disorder benefits) except prescription drugs. Certain benefits, such as preventive care, are provided without regard to the deductible. The imposition of other types of financial requirements or treatment limitations varies with each classification. Using reasonable methods, the plan projects its payments for medical/surgical benefits in each classification for the upcoming year as follows:

Classification	Benefits subject to deductible	Total benefits	Percent subject to deductible
Inpatient, in-network	$1,800x	$2,000x	90
Inpatient, out-of-network	1,000x	1,000x	100
Outpatient, in-network	1,400x	2,000x	70
Outpatient, out-of-network	1,880x	2,000x	94
Emergency care	300x	500x	60

(ii) *Conclusion.* In this *Example 4,* the two-thirds threshold of the substantially all standard is met with respect to each classification except emergency care because in each of those other classifications at least two-thirds of medical/surgical benefits are subject to the $500 deductible. Moreover, the $500 deductible is the predominant level in each of those other classifications because it is the only level. However, emergency care mental health and substance use disorder benefits cannot be subject to the $500

deductible because it does not apply to substantially all emergency care medical/surgical benefits.

(4) *Nonquantitative treatment limitations*—(i) *General rule.* A group health plan (or health insurance coverage) may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification.

(ii) *Illustrative list of nonquantitative treatment limitations.* Nonquantitative treatment limitations include—

(A) Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(B) Formulary design for prescription drugs;

(C) For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;

(D) Standards for provider admission to participate in a network, including reimbursement rates;

(E) Plan methods for determining usual, customary, and reasonable charges;

(F) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);

(G) Exclusions based on failure to complete a course of treatment; and

(H) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.

(iii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A plan requires prior authorization from the plan's utilization reviewer that a treatment is medically necessary for all inpatient medical/surgical benefits and for all inpatient mental health and substance use disorder benefits. In practice, inpatient benefits for medical/surgical conditions are routinely approved for seven days, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan. On the other hand, for inpatient mental health and substance use disorder benefits, routine approval is given only for one day, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan.

(ii) *Conclusion.* In this Example 1, the plan violates the rules of this paragraph (c)(4) because it is applying a stricter nonquantitative treatment limitation in practice to mental health and substance use disorder benefits than is applied to medical/surgical benefits.

Example 2. (i) *Facts.* A plan applies concurrent review to inpatient care where there are high levels of variation in length of stay (as measured by a coefficient of variation exceeding 0.8). In practice, the application of this standard affects 60 percent of mental health conditions and substance use disorders, but only 30 percent of medical/surgical conditions.

(ii) *Conclusion.* In this *Example 2,* the plan complies with the rules of this paragraph (c)(4) because the evidentiary standard used by the plan is applied no more stringently for mental health and substance use disorder benefits than for medical/surgical benefits, even though it results in an overall difference in the application of concurrent review for mental health conditions or substance use disorders than for medical/surgical conditions.

Example 3. (i) *Facts.* A plan requires prior approval that a course of treatment is medically necessary for outpatient, in-network medical/surgical, mental health, and substance use disorder benefits and uses comparable criteria in determining whether a course of treatment is medically necessary. For mental health and substance use disorder treatments that do not have prior approval, no benefits will be paid; for medical/surgical treatments that do not have prior approval, there will only be a 25 percent reduction in the benefits the plan would otherwise pay.

(ii) *Conclusion.* In this *Example 3,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical necessity—is applied both to mental health and substance use disorder benefits and to medical/surgical benefits for outpatient, in-network services, it is not applied in a comparable way. The penalty for failure to obtain prior approval for mental health and substance use disorder benefits is not comparable to the penalty for failure to obtain prior approval for medical/surgical benefits.

Example 4. (i) *Facts.* A plan generally covers medically appropriate treatments. For both medical/surgical benefits and mental health and substance use disorder benefits, evidentiary standards used in determining whether a treatment is medically appropriate (such as the number of visits or days of coverage) are based on recommendations made by panels of experts with appropriate training and experience in the fields of medicine involved. The evidentiary standards are applied in a manner that is based on clinically appropriate standards of care for a condition.

(ii) *Conclusion.* In this *Example 4,* the plan complies with the rules of this paragraph (c)(4) because the processes for developing the evidentiary standards used to determine medical appropriateness and the application of these standards to mental health and substance use disorder benefits are comparable to and are applied no more stringently than for medical/surgical benefits. This is the result even if the application of the evidentiary standards does not result in similar numbers of visits, days of coverage, or other benefits utilized for mental health conditions or substance use disorders as it does for any particular medical/surgical condition.

Example 5. (i) *Facts.* A plan generally covers medically appropriate treatments. In determining whether prescription drugs are medically appropriate, the plan automatically excludes coverage for antidepressant drugs that are given a black box warning label by the Food and Drug Administration (indicating the drug carries a significant risk of serious adverse effects). For other drugs with a black box warning (including those prescribed for other mental health conditions and substance use disorders, as well as for medical/surgical conditions), the plan will provide coverage if the prescribing physician obtains authorization from the plan that the drug is medically appropriate for the individual, based on clinically appropriate standards of care.

(ii) *Conclusion.* In this *Example 5,* the plan violates the rules of this paragraph (c)(4). Although the standard for applying a nonquantitative treatment limitation is the same for both mental health and substance use disorder benefits and medical/surgical benefits—whether a drug has a black box warning—it is not applied in a comparable manner. The plan's unconditional exclusion of antidepressant drugs given a black box warning is not comparable to the conditional exclusion for other drugs with a black box warning.

Example 6. (i) *Facts.* An employer maintains both a major medical plan and an employee assistance program (EAP). The EAP provides, among other benefits, a limited number of mental health or substance use disorder counseling sessions. Participants are eligible for mental health or substance use disorder benefits under the major medical plan only after exhausting the counseling sessions provided by the EAP. No similar exhaustion requirement applies with respect to medical/surgical benefits provided under the major medical plan.

(ii) *Conclusion.* In this *Example 6,* limiting eligibility for mental health and substance use disorder benefits only after EAP benefits are exhausted is a nonquantitative treatment limitation subject to the parity requirements of this paragraph (c). Because no comparable requirement applies to medical/surgical benefits, the requirement may not be applied to mental health or substance use disorder benefits.

Example 7. (i) *Facts.* Training and State licensing requirements often vary among types of providers. A plan applies a general standard that any provider must meet the highest licensing requirement related to supervised clinical experience under applicable State law in order to participate in the plan's provider network. Therefore, the plan requires master's-level mental health therapists to have post-degree, supervised clinical experience but does not impose this requirement on master's-level general medical providers because the scope of their licensure under applicable State law does require clinical experience. In addition, the plan does not require post-degree, supervised clinical experience for psychiatrists or Ph.D. level psychologists since their licensing already requires supervised training.

(ii) *Conclusion.* In this *Example 7,* the plan complies with the rules of this paragraph (c)(4). The requirement that master's-level mental health therapists must have supervised clinical experience to join the network is permissible, as long as the plan consistently applies the same standard to all providers even though it may have a disparate impact on certain mental health providers.

Example 8. (i) *Facts.* A plan considers a wide array of factors in designing medical management techniques for both mental health and substance use disorder benefits and medical/surgical benefits, such as cost of treatment; high cost growth; variability in cost and quality; elasticity of demand; provider discretion in determining diagnosis, or type or length of treatment; clinical efficacy of any proposed treatment or service; licensing and accreditation of providers; and claim types with a high percentage of fraud. Based on application of these factors in a comparable fashion, prior authorization is required for some (but not all) mental health and substance use disorder benefits, as well as for some medical/surgical benefits, but not for others. For example, the plan requires prior authorization for: outpatient surgery; speech, occupational, physical, cognitive and behavioral therapy extending for more than six months; durable medical equipment; diagnostic imaging; skilled nursing visits; home infusion therapy; coordinated home care; pain management; high-risk prenatal care; delivery by cesarean section; mastectomy; prostate cancer treatment; narcotics prescribed for more than seven days; and all inpatient services beyond 30 days. The evidence considered in developing its medical management techniques includes consideration of a wide array of recognized medical literature and professional standards and protocols (including comparative effectiveness studies and clinical trials). This evidence and how it was used to develop these medical management techniques is also well documented by the plan.

(ii) *Conclusion.* In this *Example 8,* the plan complies with the rules of this paragraph (c)(4). Under the terms of the plan as written and in operation, the processes, strategies, evidentiary standards, and other factors considered by the plan in implementing its prior authorization requirement with respect to mental health and substance use disorder benefits are comparable to, and applied no more stringently than, those applied with respect to medical/surgical benefits.

Example 9. (i) *Facts.* A plan generally covers medically appropriate treatments. The plan automatically excludes coverage for inpatient substance use disorder treatment in any setting outside of a hospital (such as a freestanding or residential treatment center). For inpatient treatment outside of a hospital for other conditions (including freestanding or residential treatment centers prescribed for mental health conditions, as well as for medical/surgical conditions), the plan will provide coverage if the prescribing physician obtains authorization from the plan that the inpatient treatment is medically appropriate for the individual, based on clinically appropriate standards of care.

(ii) *Conclusion.* In this *Example 9,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical appropriateness—is applied to both mental health and substance use disorder benefits and medical/surgical benefits, the plan's unconditional exclusion of substance use disorder treatment in any setting outside of a hospital is not comparable to the conditional exclusion of inpatient treatment outside of a hospital for other conditions.

Example 10. (i) *Facts.* A plan generally provides coverage for medically appropriate medical/surgical benefits as well as mental health and substance use disorder benefits. The plan excludes coverage for inpatient, out-of-network treatment of chemical dependency when obtained outside of the State where the policy is written. There is no similar exclusion for medical/surgical benefits within the same classification.

(ii) *Conclusion.* In this Example 10, the plan violates the rules of this paragraph (c)(4). The plan is imposing a nonquantitative treatment limitation that restricts benefits based on geographic location. Because there is no comparable exclusion that applies to medical/surgical benefits, this exclusion may not be applied to mental health or substance use disorder benefits.

Example 11. (i) *Facts.* A plan requires prior authorization for all outpatient mental health and substance use disorder services after the ninth visit and will only approve up to five additional visits per authorization. With respect to outpatient medical/surgical benefits, the plan allows an initial visit without prior authorization. After the initial visit, the plan pre-approves benefits based on the individual treatment plan recommended by the attending provider based on that individual's specific medical condition. There is no explicit, predetermined cap on the amount of additional visits approved per authorization.

(ii) *Conclusion.* In this *Example 11,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—prior authorization to determine medical appropriateness—is applied to both mental health and substance use disorder benefits and medical/surgical benefits for outpatient services, it is not applied in a comparable way. While the plan is more generous with respect to the number of visits initially provided without pre-authorization for mental health benefits, treating all mental health conditions and substance use disorders in the same manner, while providing for individualized treatment of medical conditions, is not a comparable application of this nonquantitative treatment limitation.

(5) *Exemptions.* The rules of this paragraph (c) do not apply if a group health plan (or health insurance coverage) satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(d) *Availability of plan information*—(1) *Criteria for medical necessity determinations.* The criteria for medical necessity determinations made under a group health plan with respect to mental health or substance use disorder benefits (or health insurance coverage offered in connection with the plan with respect to such benefits) must be made available by the plan administrator (or the health insurance issuer offering such coverage) to any current or potential participant, beneficiary, or contracting provider upon request.

(2) *Reason for any denial.* The reason for any denial under a group health plan (or health insurance coverage offered in connection with such plan) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available by the plan administrator (or the health insurance issuer offering such coverage) to the participant or beneficiary in a form and manner consistent with the requirements of § 2560.503–1 of this chapter for group health plans.

(3) *Provisions of other law.* Compliance with the disclosure requirements in paragraphs (d)(1) and (d)(2) of this section is not determinative of compliance with any other provision of applicable Federal or State law. In particular, in addition to those disclosure requirements, provisions of other applicable law require disclosure of information relevant to medical/surgical, mental health, and substance use disorder benefits. For example, ERISA section 104 and § 2520.104b–1 of this chapter provide that, for plans subject to ERISA, instruments under which the plan is established or operated must generally be furnished to plan participants within 30 days of request. Instruments under which the plan is established or operated include documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to

apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan. In addition, §§ 2560.503–1 and 2590.715–2719 of this chapter set forth rules regarding claims and appeals, including the right of claimants (or their authorized representative) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits. This includes documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan.

(e) *Applicability*—(1) *Group health plans.* The requirements of this section apply to a group health plan offering medical/surgical benefits and mental health or substance use disorder benefits. If, under an arrangement or arrangements to provide medical care benefits by an employer or employee organization (including for this purpose a joint board of trustees of a multiemployer trust affiliated with one or more multiemployer plans), any participant (or beneficiary) can simultaneously receive coverage for medical/surgical benefits and coverage for mental health or substance use disorder benefits, then the requirements of this section (including the exemption provisions in paragraph (g) of this section) apply separately with respect to each combination of medical/surgical benefits and of mental health or substance use disorder benefits that any participant (or beneficiary) can simultaneously receive from that employer's or employee organization's arrangement or arrangements to provide medical care benefits, and all such combinations are considered for purposes of this section to be a single group health plan.

(2) *Health insurance issuers.* The requirements of this section apply to a health insurance issuer offering health insurance coverage for mental health or substance use disorder benefits in connection with a group health plan subject to paragraph (e)(1) of this section.

(3) *Scope.* This section does not—

(i) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) to provide any mental health benefits or substance use disorder benefits, and the provision of benefits by a plan (or health insurance coverage) for one or more mental health conditions or substance use disorders does not require the plan or health insurance coverage under this section to provide benefits for any other mental health condition or substance use disorder;

(ii) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) that provides coverage for mental health or substance use disorder benefits only to the extent required under PHS Act section 2713 to provide additional mental health or substance use disorder benefits in any classification in accordance with this section; or

(iii) Affect the terms and conditions relating to the amount, duration, or scope of mental health or substance use disorder benefits under the plan (or health insurance coverage) except as specifically provided in paragraphs (b) and (c) of this section.

(4) *Coordination with EHB requirements.* Nothing in paragraph (f) or (g) of this section changes the requirements of 45 CFR 147.150 and 45 CFR 156.115, providing that a health insurance issuer offering non-grandfathered health insurance coverage in the individual or small group market providing mental health and substance use disorder services, including behavioral health treatment services, as part of essential health benefits required under 45 CFR 156.110(a)(5) and 156.115(a), must comply with the provisions of 45 CFR 146.136 to satisfy the requirement to provide essential health benefits.

(f) *Small employer exemption*—(1) *In general.* The requirements of this section do not apply to a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer. For purposes of this paragraph (f), 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 two (or one in the case of an employer residing in a State that permits small groups to include a single individual) but not more than 50 employees on business days during the preceding calendar year. See section 732(a) of ERISA and § 2590.732(b), which provide that this section (and certain other sections) does not apply to any group health plan (and health insurance issuer offering coverage in connection with a group health plan) for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (f)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Code are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(g) *Increased cost exemption*—(1) *In general.* If the application of this section to a group health plan (or health insurance coverage offered in connection with such plans) results in an increase for the plan year involved of the actual total cost of coverage with respect to medical/surgical benefits and mental health and substance use disorder benefits as determined and certified under paragraph (g)(3) of this section by an amount that exceeds the applicable percentage described in paragraph (g)(2) of this section of the actual total plan costs, the provisions of this section shall not apply to such plan (or coverage) during the following plan year, and such exemption shall apply to the plan (or coverage) for one plan year. An employer or issuer may elect to continue to provide mental health and substance use disorder benefits in compliance with this section with respect to the plan or coverage involved regardless of any increase in total costs.

(2) *Applicable percentage.* With respect to a plan or coverage, the applicable percentage described in this paragraph (g) is—

(i) 2 percent in the case of the first plan year in which this section is applied to the plan or coverage; and

(ii) 1 percent in the case of each subsequent plan year.

(3) *Determinations by actuaries*—(i) Determinations as to increases in actual costs under a plan or coverage that are attributable to implementation of the requirements of this section shall be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. All such determinations must be based on the formula specified in paragraph (g)(4) of

this section and shall be in a written report prepared by the actuary.

(ii) The written report described in paragraph (g)(3)(i) of this section shall be maintained by the group health plan or health insurance issuer, along with all supporting documentation relied upon by the actuary, for a period of six years following the notification made under paragraph (g)(6) of this section.

(4) *Formula.* The formula to be used to make the determination under paragraph (g)(3)(i) of this section is expressed mathematically as follows:

$$[(E_1 - E_0)/T_0] - D > k$$

(i) E_1 is the actual total cost of coverage with respect to mental health and substance use disorder benefits for the base period, including claims paid by the plan or issuer with respect to mental health and substance use disorder benefits and administrative costs (amortized over time) attributable to providing these benefits consistent with the requirements of this section.

(ii) E_0 is the actual total cost of coverage with respect to mental health and substance use disorder benefits for the length of time immediately before the base period (and that is equal in length to the base period), including claims paid by the plan or issuer with respect to mental health and substance use disorder benefits and administrative costs (amortized over time) attributable to providing these benefits.

(iii) T_0 is the actual total cost of coverage with respect to all benefits during the base period.

(iv) k is the applicable percentage of increased cost specified in paragraph (g)(2) of this section that will be expressed as a fraction for purposes of this formula.

(v) D is the average change in spending that is calculated by applying the formula $(E_1 - E_0)/T_0$ to mental health and substance use disorder spending in each of the five prior years and then calculating the average change in spending.

(5) *Six month determination.* If a group health plan or health insurance issuer seeks an exemption under this paragraph (g), determinations under paragraph (g)(3) of this section shall be made after such plan or coverage has complied with this section for at least the first 6 months of the plan year involved.

(6) *Notification.* A group health plan or health insurance issuer that, based on the certification described under paragraph (g)(3) of this section, qualifies for an exemption under this paragraph (g), and elects to implement the exemption, must notify participants and beneficiaries covered under the plan, the Secretary, and the appropriate State agencies of such election.

(i) *Participants and beneficiaries*—(A) *Content of notice.* The notice to participants and beneficiaries must include the following information:

(*1*) A statement that the plan or issuer is exempt from the requirements of this section and a description of the basis for the exemption.

(*2*) The name and telephone number of the individual to contact for further information.

(*3*) The plan or issuer name and plan number (PN).

(*4*) The plan administrator's name, address, and telephone number.

(*5*) For single-employer plans, the plan sponsor's name, address, and telephone number (if different from paragraph (g)(6)(i)(A)(*3*) of this section) and the plan sponsor's employer identification number (EIN).

(*6*) The effective date of such exemption.

(*7*) A statement regarding the ability of participants and beneficiaries to contact the plan administrator or health insurance issuer to see how benefits may be affected as a result of the plan's or issuer's election of the exemption.

(*8*) A statement regarding the availability, upon request and free of charge, of a summary of the information on which the exemption is based (as required under paragraph (g)(6)(i)(D) of this section).

(B) *Use of summary of material reductions in covered services or benefits.* A plan or issuer may satisfy the requirements of paragraph (g)(6)(i)(A) of this section by providing participants and beneficiaries (in accordance with paragraph (g)(6)(i)(C) of this section) with a summary of material reductions in covered services or benefits consistent with § 2520.104b–3(d) of this chapter that also includes the information specified in paragraph (g)(6)(i)(A) of this section. However, in all cases, the exemption is not effective until 30 days after notice has been sent.

(C) *Delivery.* The notice described in this paragraph (g)(6)(i) is required to be provided to all participants and beneficiaries. The notice may be furnished by any method of delivery that satisfies the requirements of section 104(b)(1) of ERISA (29 U.S.C. 1024(b)(1)) and its implementing regulations (for example, first-class mail). If the notice is provided to the participant and any beneficiaries at the participant's last known address, then the requirements of this paragraph (g)(6)(i) are satisfied with respect to the participant and all beneficiaries residing at that address. If a beneficiary's last known address is different from the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

(D) *Availability of documentation.* The plan or issuer must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based. (For purposes of this paragraph (g), an individual who is not a participant or beneficiary and who presents a notice described in paragraph (g)(6)(i) of this section is considered to be a representative. A representative may request the summary of information by providing the plan a copy of the notice provided to the participant under paragraph (g)(6)(i) of this section with any personally identifiable information redacted.) The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan or coverage absent amendments required to comply with paragraphs (b) and (c) of this section, the administrative costs related to those claims, and other administrative costs attributable to complying with the requirements of this section. In no event should the summary of information include any personally identifiable information.

(ii) *Federal agencies*—(A) *Content of notice.* The notice to the Secretary must include the following information:

(*1*) A description of the number of covered lives under the plan (or coverage) involved at the time of the notification, and as applicable, at the time of any prior election of the cost exemption under this paragraph (g) by such plan (or coverage);

(*2*) For both the plan year upon which a cost exemption is sought and the year prior, a description of the actual total costs of coverage with respect to medical/surgical benefits and mental health and substance use disorder benefits; and

(*3*) For both the plan year upon which a cost exemption is sought and the year prior, the actual total costs of coverage with respect to mental health and substance use disorder benefits under the plan.

(B) *Reporting.* A group health plan, and any health insurance coverage offered in connection with a group health plan, must provide notice to the Department of Labor. This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (g)(6)(ii)(A) of this section identifying

the benefit package to which the exemption applies.

(iii) *Confidentiality.* A notification to the Secretary under this paragraph (g)(6) shall be confidential. The Secretary shall make available, upon request and not more than on an annual basis, an anonymous itemization of each notification that includes—

(A) A breakdown of States by the size and type of employers submitting such notification; and

(B) A summary of the data received under paragraph (g)(6)(ii) of this section.

(iv) *Audits.* The Secretary may audit the books and records of a group health plan or a health insurance issuer relating to an exemption, including any actuarial reports, during the 6 year period following notification of such exemption under paragraph (g)(6) of this section. A State agency receiving a notification under paragraph (g)(6) of this section may also conduct such an audit with respect to an exemption covered by such notification.

(h) *Sale of nonparity health insurance coverage.* A health insurance issuer may not sell a policy, certificate, or contract of insurance that fails to comply with paragraph (b) or (c) of this section, except to a plan for a year for which the plan is exempt from the requirements of this section because the plan meets the requirements of paragraph (f) or (g) of this section.

(i) *Applicability dates*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to group health plans and health insurance issuers offering group health insurance coverage on the first day of the first plan year beginning on or after July 1, 2014. Until the applicability date, plans and issuers are required to continue to comply with the corresponding sections of 29 CFR 2590.712 contained in the 29 CFR, parts 1927 to end, edition revised as of July 1, 2013.

(2) *Special effective date for certain collectively-bargained plans.* For a group health plan maintained pursuant to one or more collective bargaining agreements ratified before October 3, 2008, the requirements of this section do not apply to the plan (or health insurance coverage offered in connection with the plan) for plan years beginning before the date on which the last of the collective bargaining agreements terminates (determined without regard to any extension agreed to after October 3, 2008).

■ 3. Section 2590.715–2719 is amended by adding a sentence to the end of the introductory text of paragraph (d) and revising paragraph (d)(1)(i) to read as follows:

§ 2590.712 Internal claims and appeals and external review processes.

* * * * *

(d) * * * A Multi State Plan or MSP, as defined by 45 CFR 800.20, must provide an effective Federal external review process in accordance with this paragraph (d).

(1) * * *

(i) *In general.* Subject to the suspension provision in paragraph (d)(1)(ii) of this section and except to the extent provided otherwise by the Secretary in guidance, the Federal external review process established pursuant to this paragraph (d) applies, at a minimum, to any adverse benefit determination or final internal adverse benefit determination (as defined in paragraphs (a)(2)(i) and (a)(2)(v) of this section), except that a denial, reduction, termination, or a failure to provide payment for a benefit based on a determination that a participant or beneficiary fails to meet the requirements for eligibility under the terms of a group health plan is not eligible for the Federal external review process under this paragraph (d).

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Department of Health and Human Services

45 CFR Subtitle A

For the reasons set forth in the preamble, the Department of Health and Human Services adopts as final the interim final rule with comment period amending 45 CFR part 146, which was published on February 2, 2010, in the **Federal Register** at 75 FR 5410, with the following changes, and further amends part 147 as set forth below:

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).

■ 2. Section 146.136 is revised to read as follows:

§ 146.136 Parity in mental health and substance use disorder benefits.

(a) *Meaning of terms.* For purposes of this section, except where the context clearly indicates otherwise, the following terms have the meanings indicated:

Aggregate lifetime dollar limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan (or health insurance coverage offered in connection with such a plan) for any coverage unit.

Annual dollar limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a group health plan (or health insurance coverage offered in connection with such a plan) for any coverage unit.

Coverage unit means coverage unit as described in paragraph (c)(1)(iv) of this section.

Cumulative financial requirements are financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. (However, cumulative financial requirements do not include aggregate lifetime or annual dollar limits because these two terms are excluded from the meaning of financial requirements.)

Cumulative quantitative treatment limitations are treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits.

Financial requirements include deductibles, copayments, coinsurance, or out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Medical/surgical benefits means benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the plan or health insurance coverage and in accordance with applicable Federal and State law, but does not include mental health or substance use disorder benefits. Any condition defined by the plan or coverage as being or as not being a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the International Classification of Diseases (ICD) or State guidelines).

Mental health benefits means benefits with respect to items or services for mental health conditions, as defined under the terms of the plan or health insurance coverage and in accordance with applicable Federal and State law. Any condition defined by the plan or coverage as being or as not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the most

current version of the ICD, or State guidelines).

Substance use disorder benefits means benefits with respect to items or services for substance use disorders, as defined under the terms of the plan or health insurance coverage and in accordance with applicable Federal and State law. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the DSM, the most current version of the ICD, or State guidelines).

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as 50 outpatient visits per year), and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage. (See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.) A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation for purposes of this definition.

(b) *Parity requirements with respect to aggregate lifetime and annual dollar limits.* This paragraph (b) details the application of the parity requirements with respect to aggregate lifetime and annual dollar limits. This paragraph (b) does not address the provisions of PHS Act section 2711, which prohibit imposing lifetime and annual limits on the dollar value of essential health benefits. For more information, see § 147.126 of this subchapter.

(1) *General*—(i) *General parity requirement.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits must comply with paragraph (b)(2), (b)(3), or (b)(5) of this section.

(ii) *Exception.* The rule in paragraph (b)(1)(i) of this section does not apply if a plan (or health insurance coverage) satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan (or health insurance coverage) does not include an aggregate lifetime or annual dollar limit on any medical/surgical benefits or includes an aggregate lifetime or annual dollar limit that applies to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual dollar limit, respectively, on mental health or substance use disorder benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan (or health insurance coverage) includes an aggregate lifetime or annual dollar limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual dollar limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health or substance use disorder benefits in a manner that does not distinguish between the medical/surgical benefits and mental health or substance use disorder benefits; or

(ii) Not include an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is less than the aggregate lifetime or annual dollar limit, respectively, on medical/surgical benefits. (For cumulative limits other than aggregate lifetime or annual dollar limits, see paragraph (c)(3)(v) of this section prohibiting separately accumulating cumulative financial requirements or cumulative quantitative treatment limitations.)

(4) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to an aggregate lifetime or annual dollar limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual dollar limits). Any reasonable method may be used to determine whether the dollar amount expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(5) *Plan not described in paragraph (b)(2) or (b)(3) of this section*—(i) *In general.* A group health plan (or health insurance coverage) that is not described in paragraph (b)(2) or (b)(3) of this section with respect to aggregate lifetime or annual dollar limits on medical/surgical benefits, must either—

(A) Impose no aggregate lifetime or annual dollar limit, as appropriate, on mental health or substance use disorder benefits; or

(B) Impose an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is no less than an average limit calculated for medical/surgical benefits in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual dollar limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(5)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated dollar limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(5), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(4) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(c) *Parity requirements with respect to financial requirements and treatment limitations*—(1) *Clarification of terms*—(i) *Classification of benefits.* When reference is made in this paragraph (c) to a classification of benefits, the term ''classification'' means a classification as described in paragraph (c)(2)(ii) of this section.

(ii) *Type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a type of financial requirement or treatment limitation, the reference to type means its nature. Different types of financial requirements include deductibles, copayments, coinsurance, and out-of-pocket maximums. Different types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits. See paragraph (c)(4)(ii) of this section for an illustrative list of nonquantitative treatment limitations.

(iii) *Level of a type of financial requirement or treatment limitation.* When reference is made in this paragraph (c) to a level of a type of financial requirement or treatment

limitation, level refers to the magnitude of the type of financial requirement or treatment limitation. For example, different levels of coinsurance include 20 percent and 30 percent; different levels of a copayment include $15 and $20; different levels of a deductible include $250 and $500; and different levels of an episode limit include 21 inpatient days per episode and 30 inpatient days per episode.

(iv) *Coverage unit.* When reference is made in this paragraph (c) to a coverage unit, coverage unit refers to the way in which a plan (or health insurance coverage) groups individuals for purposes of determining benefits, or premiums or contributions. For example, different coverage units include self-only, family, and employee-plus-spouse.

(2) *General parity requirement*—(i) *General rule.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health or substance use disorder benefits may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation. The application of the rules of this paragraph (c)(2) to financial requirements and quantitative treatment limitations is addressed in paragraph (c)(3) of this section; the application of the rules of this paragraph (c)(2) to nonquantitative treatment limitations is addressed in paragraph (c)(4) of this section.

(ii) *Classifications of benefits used for applying rules*—(A) *In general.* If a plan (or health insurance coverage) provides mental health or substance use disorder benefits in any classification of benefits described in this paragraph (c)(2)(ii), mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided. In determining the classification in which a particular benefit belongs, a plan (or health insurance issuer) must apply the same standards to medical/surgical benefits and to mental health or substance use disorder benefits. To the extent that a plan (or health insurance coverage) provides benefits in a classification and imposes any separate financial requirement or treatment limitation (or separate level of a financial requirement or treatment limitation) for benefits in the classification, the rules of this paragraph (c) apply separately with respect to that classification for all financial requirements or treatment limitations (illustrated in examples in paragraph (c)(2)(ii)(C) of this section). The following classifications of benefits are the only classifications used in applying the rules of this paragraph (c):

(*1*) *Inpatient, in-network.* Benefits furnished on an inpatient basis and within a network of providers established or recognized under a plan or health insurance coverage. See special rules for plans with multiple network tiers in paragraph (c)(3)(iii) of this section.

(*2*) *Inpatient, out-of-network.* Benefits furnished on an inpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes inpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(*3*) *Outpatient, in-network.* Benefits furnished on an outpatient basis and within a network of providers established or recognized under a plan or health insurance coverage. See special rules for office visits and plans with multiple network tiers in paragraph (c)(3)(iii) of this section.

(*4*) *Outpatient, out-of-network.* Benefits furnished on an outpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes outpatient benefits under a plan (or health insurance coverage) that has no network of providers. See special rules for office visits in paragraph (c)(3)(iii) of this section.

(*5*) *Emergency care.* Benefits for emergency care.

(*6*) *Prescription drugs.* Benefits for prescription drugs. See special rules for multi-tiered prescription drug benefits in paragraph (c)(3)(iii) of this section.

(B) *Application to out-of-network providers.* See paragraph (c)(2)(ii)(A) of this section, under which a plan (or health insurance coverage) that provides mental health or substance use disorder benefits in any classification of benefits must provide mental health or substance use disorder benefits in every classification in which medical/surgical benefits are provided, including out-of-network classifications.

(C) *Examples.* The rules of this paragraph (c)(2)(ii) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A group health plan offers inpatient and outpatient benefits and does not contract with a network of providers. The plan imposes a $500 deductible on all benefits. For inpatient medical/surgical benefits, the plan imposes a coinsurance requirement. For outpatient medical/surgical benefits, the plan imposes copayments. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 1,* because the plan has no network of providers, all benefits provided are out-of-network. Because inpatient, out-of-network medical/surgical benefits are subject to separate financial requirements from outpatient, out-of-network medical/surgical benefits, the rules of this paragraph (c) apply separately with respect to any financial requirements and treatment limitations, including the deductible, in each classification.

Example 2. (i) *Facts.* A plan imposes a $500 deductible on all benefits. The plan has no network of providers. The plan generally imposes a 20 percent coinsurance requirement with respect to all benefits, without distinguishing among inpatient, outpatient, emergency care, or prescription drug benefits. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 2,* because the plan does not impose separate financial requirements (or treatment limitations) based on classification, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance across all benefits.

Example 3. (i) *Facts.* Same facts as *Example 2,* except the plan exempts emergency care benefits from the 20 percent coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan imposes separate financial requirements based on classifications, the rules of this paragraph (c) apply with respect to the deductible and the coinsurance separately for—

(A) Benefits in the emergency care classification; and

(B) All other benefits.

Example 4. (i) *Facts.* Same facts as *Example 2,* except the plan also imposes a preauthorization requirement for all inpatient treatment in order for benefits to be paid. No such requirement applies to outpatient treatment.

(ii) *Conclusion.* In this *Example 4,* because the plan has no network of providers, all benefits provided are out-of-network. Because the plan imposes a separate treatment limitation based on classifications, the rules of this paragraph (c) apply with respect to the deductible and coinsurance separately for—

(A) Inpatient, out-of-network benefits; and
(B) All other benefits.

(3) *Financial requirements and quantitative treatment limitations*—(i) *Determining ''substantially all'' and ''predominant''*—(A) *Substantially all.* For purposes of this paragraph (c), a type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification. (For this purpose, benefits expressed as subject to a zero level of a type of financial requirement are treated as benefits not subject to that type of financial requirement, and benefits expressed as subject to a quantitative treatment limitation that is unlimited are treated as benefits not subject to that type of quantitative treatment limitation.) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, then that type cannot be applied to mental health or substance use disorder benefits in that classification.

(B) *Predominant*—(*1*) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification as determined under paragraph (c)(3)(i)(A) of this section, the level of the financial requirement or quantitative treatment limitation that is considered the predominant level of that type in a classification of benefits is the level that applies to more than one-half of medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation.

(*2*) If, with respect to a type of financial requirement or quantitative treatment limitation that applies to at least two-thirds of all medical/surgical benefits in a classification, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to the financial requirement or quantitative treatment limitation, the plan (or health insurance issuer) may combine levels until the combination of levels applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in the classification. The least restrictive level within the combination is considered the predominant level of that type in the classification. (For this purpose, a plan may combine the most restrictive levels first, with each less restrictive level added to the combination until the combination applies to more than one-half of the benefits subject to the financial requirement or treatment limitation.)

(C) *Portion based on plan payments.* For purposes of this paragraph (c), the determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the financial requirement or quantitative treatment limitation).

(D) *Clarifications for certain threshold requirements.* For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied. For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied. Similar rules apply for any other thresholds at which the rate of plan payment changes. (See also PHS Act section 2707(b) and Affordable Care Act section 1302(c), which establish limitations on annual deductibles for non-grandfathered health plans in the small group market and annual limitations on out-of-pocket maximums for all non-grandfathered health plans.)

(E) *Determining the dollar amount of plan payments.* Subject to paragraph (c)(3)(i)(D) of this section, any reasonable method may be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation).

(ii) *Application to different coverage units.* If a plan (or health insurance coverage) applies different levels of a financial requirement or quantitative treatment limitation to different coverage units in a classification of medical/surgical benefits, the predominant level that applies to substantially all medical/surgical benefits in the classification is determined separately for each coverage unit.

(iii) *Special rules*—(A) *Multi-tiered prescription drug benefits.* If a plan (or health insurance coverage) applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations) and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits, the plan (or health insurance coverage) satisfies the parity requirements of this paragraph (c) with respect to prescription drug benefits. Reasonable factors include cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(B) *Multiple network tiers.* If a plan (or health insurance coverage) provides benefits through multiple tiers of in-network providers (such as an in-network tier of preferred providers with more generous cost-sharing to participants than a separate in-network tier of participating providers), the plan may divide its benefits furnished on an in-network basis into sub-classifications that reflect network tiers, if the tiering is based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section (such as quality, performance, and market standards) and without regard to whether a provider provides services with respect to medical/surgical benefits or mental health or substance use disorder benefits. After the sub-classifications are established, the plan or issuer may not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification using the methodology set forth in paragraph (c)(3)(i) of this section.

(C) *Sub-classifications permitted for office visits, separate from other outpatient services.* For purposes of applying the financial requirement and treatment limitation rules of this paragraph (c), a plan or issuer may divide its benefits furnished on an outpatient basis into the two sub-classifications described in this paragraph (c)(3)(iii)(C). After the sub-classifications are established, the plan or issuer may not impose any financial

requirement or quantitative treatment limitation on mental health or substance use disorder benefits in any sub-classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in the sub-classification using the methodology set forth in paragraph (c)(3)(i) of this section. Sub-classifications other than these special rules, such as separate sub-classifications for generalists and specialists, are not permitted. The two sub-classifications permitted under this paragraph (c)(3)(iii)(C) are:

(*1*) Office visits (such as physician visits), and

(*2*) All other outpatient items and services (such as outpatient surgery, facility charges for day treatment centers, laboratory charges, or other medical items).

(iv) *Examples.* The rules of paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) of this section are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* For inpatient, out-of-network medical/surgical benefits, a group health plan imposes five levels of coinsurance. Using a reasonable method, the plan projects its payments for the upcoming year as follows:

Coinsurance rate	0%	10%	15%	20%	30%	Total.
Projected payments	$200x	$100x	$450x	$100x	$150x	$1,000x.
Percent of total plan costs	20%	10%	45%	10%	15%	
Percent subject to coinsurance level	N/A	12.5% (100x/800x)	56.25% (450x/800x)	12.5% (100x/800x)	18.75% (150x/800x)	

The plan projects plan costs of $800x to be subject to coinsurance ($100x + $450x + $100x + $150x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to coinsurance, and 56.25 percent of the benefits subject to coinsurance are projected to be subject to the 15 percent coinsurance level.

(ii) *Conclusion.* In this *Example 1,* the two-thirds threshold of the substantially all standard is met for coinsurance because 80 percent of all inpatient, out-of-network medical/surgical benefits are subject to coinsurance. Moreover, the 15 percent coinsurance is the predominant level because it is applicable to more than one-half of inpatient, out-of-network medical/surgical benefits subject to the coinsurance requirement. The plan may not impose any level of coinsurance with respect to inpatient, out-of-network mental health or substance use disorder benefits that is more restrictive than the 15 percent level of coinsurance.

Example 2. (i) *Facts.* For outpatient, in-network medical/surgical benefits, a plan imposes five different copayment levels. Using a reasonable method, the plan projects payments for the upcoming year as follows:

Copayment amount	$0	$10	$15	$20	$50	Total.
Projected payments	$200x	$200x	$200x	$300x	$100x	$1,000x.
Percent of total plan costs	20%	20%	20%	30%	10%	
Percent subject to copayments	N/A	25% (200x/800x)	25% (200x/800x)	37.5% (300x/800x)	12.5% (100x/800x)	

The plan projects plan costs of $800x to be subject to copayments ($200x + $200x + $300x + $100x = $800x). Thus, 80 percent ($800x/$1,000x) of the benefits are projected to be subject to a copayment.

(ii) *Conclusion.* In this *Example 2,* the two-thirds threshold of the substantially all standard is met for copayments because 80 percent of all outpatient, in-network medical/surgical benefits are subject to a copayment. Moreover, there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to a copayment (for the $10 copayment, 25%; for the $15 copayment, 25%; for the $20 copayment, 37.5%; and for the $50 copayment, 12.5%). The plan can combine any levels of copayment, including the highest levels, to determine the predominant level that can be applied to mental health or substance use disorder benefits. If the plan combines the highest levels of copayment, the combined projected payments for the two highest copayment levels, the $50 copayment and the $20 copayment, are not more than one-half of the outpatient, in-network medical/surgical benefits subject to a copayment because they are exactly one-half ($300x + $100x = $400x; $400x/$800x = 50%). The combined projected payments for the three highest copayment levels—the $50 copayment, the $20 copayment, and the $15 copayment—are more than one-half of the outpatient, in-network medical/surgical benefits subject to the copayments ($100x + $300x + $200x = $600x; $600x/$800x = 75%). Thus, the plan may not impose any copayment on outpatient, in-network mental health or substance use disorder benefits that is more restrictive than the least restrictive copayment in the combination, the $15 copayment.

Example 3. (i) *Facts.* A plan imposes a $250 deductible on all medical/surgical benefits for self-only coverage and a $500 deductible on all medical/surgical benefits for family coverage. The plan has no network of providers. For all medical/surgical benefits, the plan imposes a coinsurance requirement. The plan imposes no other financial requirements or treatment limitations.

(ii) *Conclusion.* In this *Example 3,* because the plan has no network of providers, all benefits are provided out-of-network. Because self-only and family coverage are subject to different deductibles, whether the deductible applies to substantially all medical/surgical benefits is determined separately for self-only medical/surgical benefits and family medical/surgical benefits. Because the coinsurance is applied without regard to coverage units, the predominant coinsurance that applies to substantially all medical/surgical benefits is determined without regard to coverage units.

Example 4. (i) *Facts.* A plan applies the following financial requirements for prescription drug benefits. The requirements are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits. Moreover, the process for certifying a particular drug as ''generic'', ''preferred brand name'', ''non-preferred brand name'', or ''specialty'' complies with the rules of paragraph (c)(4)(i) of this section (relating to requirements for nonquantitative treatment limitations).

	Tier 1	Tier 2	Tier 3	Tier 4
Tier description	Generic drugs	Preferred brand name drugs	Non-preferred brand name drugs (which may have Tier 1 or Tier 2 alternatives)	Specialty drugs
Percent paid by plan	90%	80%	60%	50%

(ii) *Conclusion.* In this *Example 4,* the financial requirements that apply to prescription drug benefits are applied without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health or substance use disorder benefits; the process for certifying drugs in different tiers complies with paragraph (c)(4) of this section; and the bases for establishing different levels or types of financial requirements are reasonable. The financial requirements applied to prescription drug benefits do not violate the parity requirements of this paragraph (c)(3).

Example 5. (i) *Facts.* A plan has two-tiers of network of providers: A preferred provider tier and a participating provider tier. Providers are placed in either the preferred tier or participating tier based on reasonable factors determined in accordance with the rules in paragraph (c)(4)(i) of this section, such as accreditation, quality and performance measures (including customer feedback), and relative reimbursement rates. Furthermore, provider tier placement is determined without regard to whether a provider specializes in the treatment of mental health conditions or substance use disorders, or medical/surgical conditions. The plan divides the in-network classifications into two sub-classifications (in-network/preferred and in-network/participating). The plan does not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(ii) *Conclusion.* In this *Example 5,* the division of in-network benefits into sub-classifications that reflect the preferred and participating provider tiers does not violate the parity requirements of this paragraph (c)(3).

Example 6. (i) *Facts.* With respect to outpatient, in-network benefits, a plan imposes a $25 copayment for office visits and a 20 percent coinsurance requirement for outpatient surgery. The plan divides the outpatient, in-network classification into two sub-classifications (in-network office visits and all other outpatient, in-network items and services). The plan or issuer does not impose any financial requirement or quantitative treatment limitation on mental health or substance use disorder benefits in either of these sub-classifications that is more restrictive than the predominant financial requirement or quantitative treatment limitation that applies to substantially all medical/surgical benefits in each sub-classification.

(ii) *Conclusion.* In this *Example 6,* the division of outpatient, in-network benefits into sub-classifications for office visits and all other outpatient, in-network items and services does not violate the parity requirements of this paragraph (c)(3).

Example 7. (i) *Facts.* Same facts as *Example 6,* but for purposes of determining parity, the plan divides the outpatient, in-network classification into outpatient, in-network generalists and outpatient, in-network specialists.

(ii) *Conclusion.* In this *Example 7,* the division of outpatient, in-network benefits into any sub-classifications other than office visits and all other outpatient items and services violates the requirements of paragraph (c)(3)(iii)(C) of this section.

(v) *No separate cumulative financial requirements or cumulative quantitative treatment limitations*—(A) A group health plan (or health insurance coverage offered in connection with a group health plan) may not apply any cumulative financial requirement or cumulative quantitative treatment limitation for mental health or substance use disorder benefits in a classification that accumulates separately from any established for medical/surgical benefits in the same classification.

(B) The rules of this paragraph (c)(3)(v) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan imposes a combined annual $500 deductible on all medical/surgical, mental health, and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 1,* the combined annual deductible complies with the requirements of this paragraph (c)(3)(v).

Example 2. (i) *Facts.* A plan imposes an annual $250 deductible on all medical/surgical benefits and a separate annual $250 deductible on all mental health and substance use disorder benefits.

(ii) *Conclusion.* In this *Example 2,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 3. (i) *Facts.* A plan imposes an annual $300 deductible on all medical/surgical benefits and a separate annual $100 deductible on all mental health or substance use disorder benefits.

(ii) *Conclusion.* In this *Example 3,* the separate annual deductible on mental health and substance use disorder benefits violates the requirements of this paragraph (c)(3)(v).

Example 4. (i) *Facts.* A plan generally imposes a combined annual $500 deductible on all benefits (both medical/surgical benefits and mental health and substance use disorder benefits) except prescription drugs. Certain benefits, such as preventive care, are provided without regard to the deductible. The imposition of other types of financial requirements or treatment limitations varies with each classification. Using reasonable methods, the plan projects its payments for medical/surgical benefits in each classification for the upcoming year as follows:

Classification	Benefits subject to deductible	Total benefits	Percent subject to deductible
Inpatient, in-network	$1,800x	$2,000x	90
Inpatient, out-of-network	1,000x	1,000x	100
Outpatient, in-network	1,400x	2,000x	70
Outpatient, out-of-network	1,880x	2,000x	94
Emergency care	300x	500x	60

(ii) *Conclusion.* In this *Example 4,* the two-thirds threshold of the substantially all standard is met with respect to each classification except emergency care because in each of those other classifications at least two-thirds of medical/surgical benefits are subject to the $500 deductible. Moreover, the $500 deductible is the predominant level in each of those other classifications because it is the only level. However, emergency care mental health and substance use disorder benefits cannot be subject to the $500

deductible because it does not apply to substantially all emergency care medical/surgical benefits.

(4) *Nonquantitative treatment limitations*—(i) *General rule.* A group health plan (or health insurance coverage) may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification.

(ii) *Illustrative list of nonquantitative treatment limitations.* Nonquantitative treatment limitations include—

(A) Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(B) Formulary design for prescription drugs;

(C) For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;

(D) Standards for provider admission to participate in a network, including reimbursement rates;

(E) Plan methods for determining usual, customary, and reasonable charges;

(F) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);

(G) Exclusions based on failure to complete a course of treatment; and

(H) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.

(iii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples. In each example, the group health plan is subject to the requirements of this section and provides both medical/surgical benefits and mental health and substance use disorder benefits.

Example 1. (i) *Facts.* A plan requires prior authorization from the plan's utilization reviewer that a treatment is medically necessary for all inpatient medical/surgical benefits and for all inpatient mental health and substance use disorder benefits. In practice, inpatient benefits for medical/surgical conditions are routinely approved for seven days, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan. On the other hand, for inpatient mental health and substance use disorder benefits, routine approval is given only for one day, after which a treatment plan must be submitted by the patient's attending provider and approved by the plan.

(ii) *Conclusion.* In this Example 1, the plan violates the rules of this paragraph (c)(4) because it is applying a stricter nonquantitative treatment limitation in practice to mental health and substance use disorder benefits than is applied to medical/surgical benefits.

Example 2. (i) *Facts.* A plan applies concurrent review to inpatient care where there are high levels of variation in length of stay (as measured by a coefficient of variation exceeding 0.8). In practice, the application of this standard affects 60 percent of mental health conditions and substance use disorders, but only 30 percent of medical/surgical conditions.

(ii) *Conclusion.* In this *Example 2,* the plan complies with the rules of this paragraph (c)(4) because the evidentiary standard used by the plan is applied no more stringently for mental health and substance use disorder benefits than for medical/surgical benefits, even though it results in an overall difference in the application of concurrent review for mental health conditions or substance use disorders than for medical/surgical conditions.

Example 3. (i) *Facts.* A plan requires prior approval that a course of treatment is medically necessary for outpatient, in-network medical/surgical, mental health, and substance use disorder benefits and uses comparable criteria in determining whether a course of treatment is medically necessary. For mental health and substance use disorder treatments that do not have prior approval, no benefits will be paid; for medical/surgical treatments that do not have prior approval, there will only be a 25 percent reduction in the benefits the plan would otherwise pay.

(ii) *Conclusion.* In this *Example 3,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical necessity—is applied both to mental health and substance use disorder benefits and to medical/surgical benefits for outpatient, in-network services, it is not applied in a comparable way. The penalty for failure to obtain prior approval for mental health and substance use disorder benefits is not comparable to the penalty for failure to obtain prior approval for medical/surgical benefits.

Example 4. (i) *Facts.* A plan generally covers medically appropriate treatments. For both medical/surgical benefits and mental health and substance use disorder benefits, evidentiary standards used in determining whether a treatment is medically appropriate (such as the number of visits or days of coverage) are based on recommendations made by panels of experts with appropriate training and experience in the fields of medicine involved. The evidentiary standards are applied in a manner that is based on clinically appropriate standards of care for a condition.

(ii) *Conclusion.* In this *Example 4,* the plan complies with the rules of this paragraph (c)(4) because the processes for developing the evidentiary standards used to determine medical appropriateness and the application of these standards to mental health and substance use disorder benefits are comparable to and are applied no more stringently than for medical/surgical benefits. This is the result even if the application of the evidentiary standards does not result in similar numbers of visits, days of coverage, or other benefits utilized for mental health conditions or substance use disorders as it does for any particular medical/surgical condition.

Example 5. (i) *Facts.* A plan generally covers medically appropriate treatments. In determining whether prescription drugs are medically appropriate, the plan automatically excludes coverage for antidepressant drugs that are given a black box warning label by the Food and Drug Administration (indicating the drug carries a significant risk of serious adverse effects). For other drugs with a black box warning (including those prescribed for other mental health conditions and substance use disorders, as well as for medical/surgical conditions), the plan will provide coverage if the prescribing physician obtains authorization from the plan that the drug is medically appropriate for the individual, based on clinically appropriate standards of care.

(ii) *Conclusion.* In this *Example 5,* the plan violates the rules of this paragraph (c)(4). Although the standard for applying a nonquantitative treatment limitation is the same for both mental health and substance use disorder benefits and medical/surgical benefits—whether a drug has a black box warning—it is not applied in a comparable manner. The plan's unconditional exclusion of antidepressant drugs given a black box warning is not comparable to the conditional exclusion for other drugs with a black box warning.

Example 6. (i) *Facts.* An employer maintains both a major medical plan and an employee assistance program (EAP). The EAP provides, among other benefits, a limited number of mental health or substance use disorder counseling sessions. Participants are eligible for mental health or substance use disorder benefits under the major medical plan only after exhausting the counseling sessions provided by the EAP. No similar exhaustion requirement applies with respect to medical/surgical benefits provided under the major medical plan.

(ii) *Conclusion.* In this *Example 6,* limiting eligibility for mental health and substance use disorder benefits only after EAP benefits are exhausted is a nonquantitative treatment limitation subject to the parity requirements of this paragraph (c). Because no comparable requirement applies to medical/surgical benefits, the requirement may not be applied to mental health or substance use disorder benefits.

Example 7. (i) *Facts.* Training and State licensing requirements often vary among types of providers. A plan applies a general standard that any provider must meet the highest licensing requirement related to supervised clinical experience under applicable State law in order to participate in the plan's provider network. Therefore, the plan requires master's-level mental health therapists to have post-degree, supervised clinical experience but does not impose this requirement on master's-level general medical providers because the scope of their licensure under applicable State law does require clinical experience. In addition, the plan does not require post-degree, supervised clinical experience for psychiatrists or Ph.D. level psychologists since their licensing already requires supervised training.

(ii) *Conclusion.* In this *Example 7,* the plan complies with the rules of this paragraph (c)(4). The requirement that master's-level mental health therapists must have supervised clinical experience to join the network is permissible, as long as the plan consistently applies the same standard to all providers even though it may have a disparate impact on certain mental health providers.

Example 8. (i) *Facts.* A plan considers a wide array of factors in designing medical management techniques for both mental health and substance use disorder benefits and medical/surgical benefits, such as cost of treatment; high cost growth; variability in cost and quality; elasticity of demand; provider discretion in determining diagnosis, or type or length of treatment; clinical efficacy of any proposed treatment or service; licensing and accreditation of providers; and claim types with a high percentage of fraud. Based on application of these factors in a comparable fashion, prior authorization is required for some (but not all) mental health and substance use disorder benefits, as well as for some medical/surgical benefits, but not for others. For example, the plan requires prior authorization for: Outpatient surgery; speech, occupational, physical, cognitive and behavioral therapy extending for more than six months; durable medical equipment; diagnostic imaging; skilled nursing visits; home infusion therapy; coordinated home care; pain management; high-risk prenatal care; delivery by cesarean section; mastectomy; prostate cancer treatment; narcotics prescribed for more than seven days; and all inpatient services beyond 30 days. The evidence considered in developing its medical management techniques includes consideration of a wide array of recognized medical literature and professional standards and protocols (including comparative effectiveness studies and clinical trials). This evidence and how it was used to develop these medical management techniques is also well documented by the plan.

(ii) *Conclusion.* In this *Example 8,* the plan complies with the rules of this paragraph (c)(4). Under the terms of the plan as written and in operation, the processes, strategies, evidentiary standards, and other factors considered by the plan in implementing its prior authorization requirement with respect to mental health and substance use disorder benefits are comparable to, and applied no more stringently than, those applied with respect to medical/surgical benefits.

Example 9. (i) *Facts.* A plan generally covers medically appropriate treatments. The plan automatically excludes coverage for inpatient substance use disorder treatment in any setting outside of a hospital (such as a freestanding or residential treatment center). For inpatient treatment outside of a hospital for other conditions (including freestanding or residential treatment centers prescribed for mental health conditions, as well as for medical/surgical conditions), the plan will provide coverage if the prescribing physician obtains authorization from the plan that the inpatient treatment is medically appropriate for the individual, based on clinically appropriate standards of care.

(ii) *Conclusion.* In this *Example 9,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—medical appropriateness—is applied to both mental health and substance use disorder benefits and medical/surgical benefits, the plan's unconditional exclusion of substance use disorder treatment in any setting outside of a hospital is not comparable to the conditional exclusion of inpatient treatment outside of a hospital for other conditions.

Example 10. (i) *Facts.* A plan generally provides coverage for medically appropriate medical/surgical benefits as well as mental health and substance use disorder benefits. The plan excludes coverage for inpatient, out-of-network treatment of chemical dependency when obtained outside of the State where the policy is written. There is no similar exclusion for medical/surgical benefits within the same classification.

(ii) *Conclusion.* In this Example 10, the plan violates the rules of this paragraph (c)(4). The plan is imposing a nonquantitative treatment limitation that restricts benefits based on geographic location. Because there is no comparable exclusion that applies to medical/surgical benefits, this exclusion may not be applied to mental health or substance use disorder benefits.

Example 11. (i) *Facts.* A plan requires prior authorization for all outpatient mental health and substance use disorder services after the ninth visit and will only approve up to five additional visits per authorization. With respect to outpatient medical/surgical benefits, the plan allows an initial visit without prior authorization. After the initial visit, the plan pre-approves benefits based on the individual treatment plan recommended by the attending provider based on that individual's specific medical condition. There is no explicit, predetermined cap on the amount of additional visits approved per authorization.

(ii) *Conclusion.* In this *Example 11,* the plan violates the rules of this paragraph (c)(4). Although the same nonquantitative treatment limitation—prior authorization to determine medical appropriateness—is applied to both mental health and substance use disorder benefits and medical/surgical benefits for outpatient services, it is not applied in a comparable way. While the plan is more generous with respect to the number of visits initially provided without pre-authorization for mental health benefits, treating all mental health conditions and substance use disorders in the same manner, while providing for individualized treatment of medical conditions, is not a comparable application of this nonquantitative treatment limitation.

(5) *Exemptions.* The rules of this paragraph (c) do not apply if a group health plan (or health insurance coverage) satisfies the requirements of paragraph (f) or (g) of this section (relating to exemptions for small employers and for increased cost).

(d) *Availability of plan information*—(1) *Criteria for medical necessity determinations.* The criteria for medical necessity determinations made under a group health plan with respect to mental health or substance use disorder benefits (or health insurance coverage offered in connection with the plan with respect to such benefits) must be made available by the plan administrator (or the health insurance issuer offering such coverage) to any current or potential participant, beneficiary, or contracting provider upon request.

(2) *Reason for any denial.* The reason for any denial under a group health plan (or health insurance coverage offered in connection with such plan) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary must be made available by the plan administrator (or the health insurance issuer offering such coverage) to the participant or beneficiary. For this purpose, a non-Federal governmental plan (or health insurance coverage offered in connection with such plan) that provides the reason for the claim denial in a form and manner consistent with the requirements of 29 CFR 2560.503–1 for group health plans complies with the requirements of this paragraph (d)(2).

(3) *Provisions of other law.* Compliance with the disclosure requirements in paragraphs (d)(1) and (d)(2) of this section is not determinative of compliance with any other provision of applicable Federal or State law. In particular, in addition to those disclosure requirements, provisions of other applicable law require disclosure of information relevant to medical/surgical, mental health, and substance use disorder benefits. For example, § 147.136 of this subchapter sets forth rules regarding claims and appeals, including the right of claimants (or their authorized representative) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided upon request and free of charge, reasonable access to and copies

of all documents, records, and other information relevant to the claimant's claim for benefits. This includes documents with information on medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan.

(e) *Applicability*—(1) *Group health plans.* The requirements of this section apply to a group health plan offering medical/surgical benefits and mental health or substance use disorder benefits. If, under an arrangement or arrangements to provide medical care benefits by an employer or employee organization (including for this purpose a joint board of trustees of a multiemployer trust affiliated with one or more multiemployer plans), any participant (or beneficiary) can simultaneously receive coverage for medical/surgical benefits and coverage for mental health or substance use disorder benefits, then the requirements of this section (including the exemption provisions in paragraph (g) of this section) apply separately with respect to each combination of medical/surgical benefits and of mental health or substance use disorder benefits that any participant (or beneficiary) can simultaneously receive from that employer's or employee organization's arrangement or arrangements to provide medical care benefits, and all such combinations are considered for purposes of this section to be a single group health plan.

(2) *Health insurance issuers.* The requirements of this section apply to a health insurance issuer offering health insurance coverage for mental health or substance use disorder benefits in connection with a group health plan subject to paragraph (e)(1) of this section.

(3) *Scope.* This section does not—

(i) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) to provide any mental health benefits or substance use disorder benefits, and the provision of benefits by a plan (or health insurance coverage) for one or more mental health conditions or substance use disorders does not require the plan or health insurance coverage under this section to provide benefits for any other mental health condition or substance use disorder;

(ii) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) that provides coverage for mental health or substance use disorder benefits only to the extent required under PHS Act section 2713 to provide additional mental health or substance use disorder benefits in any classification in accordance with this section; or

(iii) Affect the terms and conditions relating to the amount, duration, or scope of mental health or substance use disorder benefits under the plan (or health insurance coverage) except as specifically provided in paragraphs (b) and (c) of this section.

(4) *Coordination with EHB requirements.* Nothing in paragraph (f) or (g) of this section changes the requirements of §§ 147.150 and 156.115 of this subchapter, providing that a health insurance issuer offering non-grandfathered health insurance coverage in the individual or small group market providing mental health and substance use disorder services, including behavioral health treatment services, as part of essential health benefits required under §§ 156.110(a)(5) and 156.115(a) of this subchapter, must comply with the provisions of this section to satisfy the requirement to provide essential health benefits.

(f) *Small employer exemption*—(1) *In general.* The requirements of this section do not apply to a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer (as defined in section 2791 of the PHS Act).

(2) *Rules in determining employer size.* For purposes of paragraph (f)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(g) *Increased cost exemption*—(1) *In general.* If the application of this section to a group health plan (or health insurance coverage offered in connection with such plans) results in an increase for the plan year involved of the actual total cost of coverage with respect to medical/surgical benefits and mental health and substance use disorder benefits as determined and certified under paragraph (g)(3) of this section by an amount that exceeds the applicable percentage described in paragraph (g)(2) of this section of the actual total plan costs, the provisions of this section shall not apply to such plan (or coverage) during the following plan year, and such exemption shall apply to the plan (or coverage) for one plan year. An employer or issuer may elect to continue to provide mental health and substance use disorder benefits in compliance with this section with respect to the plan or coverage involved regardless of any increase in total costs.

(2) *Applicable percentage.* With respect to a plan or coverage, the applicable percentage described in this paragraph (g) is—

(i) 2 percent in the case of the first plan year in which this section is applied to the plan or coverage; and

(ii) 1 percent in the case of each subsequent plan year.

(3) *Determinations by actuaries*—(i) Determinations as to increases in actual costs under a plan or coverage that are attributable to implementation of the requirements of this section shall be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. All such determinations must be based on the formula specified in paragraph (g)(4) of this section and shall be in a written report prepared by the actuary.

(ii) The written report described in paragraph (g)(3)(i) of this section shall be maintained by the group health plan or health insurance issuer, along with all supporting documentation relied upon by the actuary, for a period of six years following the notification made under paragraph (g)(6) of this section.

(4) *Formula.* The formula to be used to make the determination under paragraph (g)(3)(i) of this section is expressed mathematically as follows:

$$[(E_1 - E_0)/T_0] - D > k$$

(i) E_1 is the actual total cost of coverage with respect to mental health and substance use disorder benefits for the base period, including claims paid by the plan or issuer with respect to mental health and substance use disorder benefits and administrative costs (amortized over time) attributable to providing these benefits consistent with the requirements of this section.

(ii) E_0 is the actual total cost of coverage with respect to mental health and substance use disorder benefits for the length of time immediately before the base period (and that is equal in

length to the base period), including claims paid by the plan or issuer with respect to mental health and substance use disorder benefits and administrative costs (amortized over time) attributable to providing these benefits.

(iii) T_0 is the actual total cost of coverage with respect to all benefits during the base period.

(iv) k is the applicable percentage of increased cost specified in paragraph (g)(2) of this section that will be expressed as a fraction for purposes of this formula.

(v) D is the average change in spending that is calculated by applying the formula $(E_1 - E_0)/T_0$ to mental health and substance use disorder spending in each of the five prior years and then calculating the average change in spending.

(5) *Six month determination.* If a group health plan or health insurance issuer seeks an exemption under this paragraph (g), determinations under paragraph (g)(3) of this section shall be made after such plan or coverage has complied with this section for at least the first 6 months of the plan year involved.

(6) *Notification.* A group health plan or health insurance issuer that, based on the certification described under paragraph (g)(3) of this section, qualifies for an exemption under this paragraph (g), and elects to implement the exemption, must notify participants and beneficiaries covered under the plan, the Secretary, and the appropriate State agencies of such election.

(i) *Participants and beneficiaries*—(A) *Content of notice.* The notice to participants and beneficiaries must include the following information:

(*1*) A statement that the plan or issuer is exempt from the requirements of this section and a description of the basis for the exemption.

(*2*) The name and telephone number of the individual to contact for further information.

(*3*) The plan or issuer name and plan number (PN).

(*4*) The plan administrator's name, address, and telephone number.

(*5*) For single-employer plans, the plan sponsor's name, address, and telephone number (if different from paragraph (g)(6)(i)(A)(*3*) of this section) and the plan sponsor's employer identification number (EIN).

(*6*) The effective date of such exemption.

(*7*) A statement regarding the ability of participants and beneficiaries to contact the plan administrator or health insurance issuer to see how benefits may be affected as a result of the plan's or issuer's election of the exemption.

(*8*) A statement regarding the availability, upon request and free of charge, of a summary of the information on which the exemption is based (as required under paragraph (g)(6)(i)(D) of this section).

(B) *Use of summary of material reductions in covered services or benefits.* A plan or issuer may satisfy the requirements of paragraph (g)(6)(i)(A) of this section by providing participants and beneficiaries (in accordance with paragraph (g)(6)(i)(C) of this section) with a summary of material reductions in covered services or benefits consistent with 29 CFR 2520.104b–3(d) that also includes the information specified in paragraph (g)(6)(i)(A) of this section. However, in all cases, the exemption is not effective until 30 days after notice has been sent.

(C) *Delivery.* The notice described in this paragraph (g)(6)(i) is required to be provided to all participants and beneficiaries. The notice may be furnished by any method of delivery that satisfies the requirements of section 104(b)(1) of ERISA (29 U.S.C. 1024(b)(1)) and its implementing regulations (for example, first-class mail). If the notice is provided to the participant and any beneficiaries at the participant's last known address, then the requirements of this paragraph (g)(6)(i) are satisfied with respect to the participant and all beneficiaries residing at that address. If a beneficiary's last known address is different from the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

(D) *Availability of documentation.* The plan or issuer must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based. (For purposes of this paragraph (g), an individual who is not a participant or beneficiary and who presents a notice described in paragraph (g)(6)(i) of this section is considered to be a representative. A representative may request the summary of information by providing the plan a copy of the notice provided to the participant under paragraph (g)(6)(i) of this section with any personally identifiable information redacted.) The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan or coverage absent amendments required to comply with paragraphs (b) and (c) of this section, the administrative costs related to those claims, and other administrative costs attributable to complying with the requirements of this section. In no event should the summary of information include any personally identifiable information.

(ii) *Federal agencies*—(A) *Content of notice.* The notice to the Secretary must include the following information:

(*1*) A description of the number of covered lives under the plan (or coverage) involved at the time of the notification, and as applicable, at the time of any prior election of the cost exemption under this paragraph (g) by such plan (or coverage);

(*2*) For both the plan year upon which a cost exemption is sought and the year prior, a description of the actual total costs of coverage with respect to medical/surgical benefits and mental health and substance use disorder benefits; and

(*3*) For both the plan year upon which a cost exemption is sought and the year prior, the actual total costs of coverage with respect to mental health and substance use disorder benefits under the plan.

(B) *Reporting by health insurance coverage offered in connection with a church plan.* See 26 CFR 54.9812(g)(6)(ii)(B) for delivery with respect to church plans.

(C) *Reporting by health insurance coverage offered in connection with a group health plans subject to Part 7 of Subtitle B of Title I of ERISA.* See 29 CFR 2590.712(g)(6)(ii) for delivery with respect to group health plans subject to ERISA.

(D) *Reporting with respect to non-Federal governmental plans and health insurance issuers in the individual market.* A group health plan that is a non-Federal governmental plan, or a health insurance issuer offering health insurance coverage in the individual market, claiming the exemption of this paragraph (g) for any benefit package must provide notice to the Department of Health and Human Services. This requirement is satisfied if the plan or issuer sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (g)(6)(ii)(A) of this section identifying the benefit package to which the exemption applies.

(iii) *Confidentiality.* A notification to the Secretary under this paragraph (g)(6) shall be confidential. The Secretary shall make available, upon request and not more than on an annual basis, an anonymous itemization of each notification that includes—

(A) A breakdown of States by the size and type of employers submitting such notification; and

(B) A summary of the data received under paragraph (g)(6)(ii) of this section.

(iv) *Audits.* The Secretary may audit the books and records of a group health plan or a health insurance issuer relating to an exemption, including any actuarial reports, during the 6 year period following notification of such exemption under paragraph (g)(6) of this section. A State agency receiving a notification under paragraph (g)(6) of this section may also conduct such an audit with respect to an exemption covered by such notification.

(h) *Sale of nonparity health insurance coverage.* A health insurance issuer may not sell a policy, certificate, or contract of insurance that fails to comply with paragraph (b) or (c) of this section, except to a plan for a year for which the plan is exempt from the requirements of this section because the plan meets the requirements of paragraph (f) or (g) of this section.

(i) *Applicability dates*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to group health plans and health insurance issuers offering group health insurance coverage on the first day of the first plan year beginning on or after July 1, 2014. Until the applicability date, plans and issuers are required to continue to comply with the corresponding sections of § 146.136 contained in the 45 CFR, parts 1 to 199, edition revised as of October 1, 2013.

(2) *Special effective date for certain collectively-bargained plans.* For a group health plan maintained pursuant to one or more collective bargaining agreements ratified before October 3, 2008, the requirements of this section do not apply to the plan (or health insurance coverage offered in connection with the plan) for plan years beginning before the date on which the last of the collective bargaining agreements terminates (determined without regard to any extension agreed to after October 3, 2008).

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP 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.

■ 4. Section 147.136 is amended by adding a sentence to the end of the introductory text of paragraph (d) and revising paragraph (d)(1)(i) to read as follows:

§ 147.136 Internal claims and appeals and external review processes.

* * * * *

(d) * * * A Multi State Plan or MSP, as defined by 45 CFR 800.20, must provide an effective Federal external review process in accordance with this paragraph (d).

(1) * * *

(i) *In general.* Subject to the suspension provision in paragraph (d)(1)(ii) of this section and except to the extent provided otherwise by the Secretary in guidance, the Federal external review process established pursuant to this paragraph (d) applies, at a minimum, to any adverse benefit determination or final internal adverse benefit determination (as defined in paragraphs (a)(2)(i) and (a)(2)(v) of this section), except that a denial, reduction, termination, or a failure to provide payment for a benefit based on a determination that a participant or beneficiary fails to meet the requirements for eligibility under the terms of a group health plan is not eligible for the Federal external review process under this paragraph (d).

* * * * *

■ 5. Section 147.160 is added to read as follows:

§ 147.160 Parity in mental health and substance use disorder benefits.

(a) *In general.* The provisions of § 146.136 of this subchapter apply to health insurance coverage offered by health insurance issuer in the individual market in the same manner and to the same extent as such provisions apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the large group market.

(b) *Applicability date.* The provisions of this section apply for policy years beginning on or after the applicability dates set forth in § 146.136(i) of this subchapter. This section applies to non-grandfathered and grandfathered health plans as defined in § 147.140.

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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1211

Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1211

[Document Number AMS–FV–11–0074; PR–A1]

RIN 0581–AD24

Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a proposed Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order (Order). Hardwood lumber and hardwood plywood are used in products like flooring, furniture, moldings, doors, and kitchen cabinets. The program would be financed by an assessment on hardwood lumber manufacturers and hardwood plywood manufacturers and would be administered by a board of industry members selected by the Secretary of Agriculture (Secretary). The assessment rate varies according to the product manufactured. The purpose of the program would be to strengthen the position of hardwood lumber and hardwood plywood in the marketplace and maintain and expand markets for hardwood lumber and hardwood plywood. A referendum would be held among eligible hardwood lumber manufacturers and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect. This rule also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

DATES: Comments must be received by January 13, 2014. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by January 13, 2014.

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

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

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

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

Executive Order 12866 and Executive Order 13563

Executive Order 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with the U.S. Department of Agriculture (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule invites comments on a proposed industry-funded promotion, research and information program for hardwood lumber and hardwood plywood. Hardwood lumber products are used in residential and commercial construction including flooring, furniture, moldings, doors and kitchen cabinets. Industrial products include pallets, wood dunning, and railroad ties. The program would be financed by an assessment on hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood manufacturers and would be administered by a board of industry members selected by the Secretary. The initial assessment rate would be: (1) $1.00 per $1,000 in sales of hardwood lumber and hardwood lumber products; (2) $0.75 per $1,000 in sales of hardwood lumber value-added products; and (3) $3.00 per $1,000 in sales of hardwood plywood. These assessments should generate about $10 million annually. The program would exempt those hardwood lumber manufacturers with annual sales of less than $2 million and hardwood plywood manufacturers with annual sales of less than $10 million. Exports would be exempted from the program and imports would not be covered under the program. The purpose of the program would be to strengthen the position of hardwood lumber, hardwood lumber products, hardwood lumber value-

added products and hardwood plywood in the marketplace and maintain and expand markets for United States hardwood lumber, hardwood lumber products, hardwood lumber value-added products and hardwood plywood.

A referendum would be held among eligible hardwood lumber manufacturers and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect. The proposal was submitted to USDA by the Blue Ribbon Committee (BRC), a committee of 14 hardwood lumber and hardwood plywood industry leaders representing small and large manufacturers and geographically distributed throughout the United States.

This rule also announces AMS's intent to request approval by the OMB of new information collection requirements to implement the program.

Authority in 1996 Act

The proposed Order is promulgated under the 1996 Act which authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. As defined under section 513(1)(D) of the 1996 Act, agricultural commodities include the products of forestry, which includes hardwood lumber and hardwood plywood.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the 1996 Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the 1996 Act provides for orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if imports are subject to assessments). Section 516 states that an order may include an exemption of de minimis quantities of an agricultural commodity. However, the 1996 Act does not define the term de minimis and USDA is not limited to using the definition of de minimis as specified in another law or agreement. The de minimis quantity is defined for a particular program and industry.

Section 516 also includes different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board or council from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

Industry Background

The hardwood lumber industry is comprised of manufacturers of non-structural products used primarily in construction and renovation of homes, transport packaging and industrial applications. Hardwoods are timber from the wood of a cypress tree or a deciduous, broad-leafed tree which could include: aspen, birch, cypress, popular, maple, cherry, walnut and oak. Hardwood lumber products that are used in residential and commercial construction include flooring, furniture, moldings, doors and kitchen cabinets. Industrial hardwood products include pallets, wood dunning, and railroad ties. Hardwood plywood products are made by applying a high quality hardwood veneer to a backing and used in manufacturing of furniture and wood paneling. Hardwood lumber value-added products that would be assessed under the Order could include such products as solid wood unfinished strip flooring, all-sides surfaced boards, finger-jointed strips ripped to width, and moldings, but does not include multi-component or further manufactured products such as furniture, cabinets, cabinet doors, prefinished or engineered flooring, or dimension or glued components for cabinets or furniture.

Hardwood sawmills also may manufacture other sawn products including crossties, pallet cants, frame stock, and board road. The specific mix of products produced by a hardwood sawmill is influenced by mill location; local, national, and international market conditions; quality and size of logs; species availability; mill design; business practices; and other factors.

Hardwood lumber can be sold green, air dried, or kiln dried. Green and air dried lumber is normally measured and sold under National Hardwood Lumber Association (NHLA) rules [1] but can be measured and sold under proprietary rules established by an individual firm. Kiln dried lumber can be sold rough or dressed in the same quarter inch thickness increments as green lumber. Since drying normally reduces the width of boards, lumber may be sold on measurement taken before going into the kiln (net measurement prior to kiln drying is commonly referred to as gross tally) or remeasured after the kiln drying process (net tally). Kiln dried lumber is normally measured and also sold under NHLA rules but can be measured and sold under proprietary procedures established by an individual firm.[2]

Regional U.S. Timber Production [3]

According to the USDA Forest Service the volume of hardwood lumber produced in 2010 was 7,581 MMBF (million board feet). Some of the main species produced in the United States are red oak, hard maple, white oak, and sweet gum. The major producing States in the east are Pennsylvania, Tennessee, Virginia, North Carolina, and West Virginia. The bulk of timber production in the western United States is confined to Oregon and Washington. Red alder and maple trees dominate the region.

The USDA Forest Service, for 2010 stated total production of hardwood lumber in the eastern region was 3,579 MMBF and in the central region was 4,002 MMBF.

U.S. Hardwood Lumber Consumption and Output by Region

According to the industry's Hardwood Market Report (provides weekly reports on North America hardwood lumber and products since 1922), output of hardwood nonstructural products peaked in 1999 at 12.6 MMBF and fell to a record low in 2009 at 5.73 MMBF. Consumption of U.S. hardwoods has declined significantly primarily due to the U.S. housing crisis beginning in 2006. Use of U.S. hardwood products has decreased almost 50 percent since 2009. Demand has improved moderately from the 2009 low point. Hardwood consumption in 2012 was 43.6 percent below the 1999 level.

The U.S. cabinet industry consumed 42.7 percent less lumber in 2010 as compared to 2009 as more imported species and alternative materials replaced U.S. hardwoods. The flooring industry was the largest consumer of

[1] National Hardwood Lumber Association Rules for the Measurement and Inspection of Hardwood and cypress, Effective January 1, 2011 v1.1.

[2] Judd Johnson, Hardwood Market Report, 2011.

[3] USDA Forest Service, Dr. William Luppold, Princeton, WV.

U.S. hardwood lumber, however, use of hardwoods in this sector has declined from 1.5 BBF (billion board feet) in 2005 to 0.6 BBF in 2010 as competing products and imports replace domestic hardwood lumber. The furniture industry has seen a fundamental shift in consumption by U.S. manufacturers. In 1999, the furniture industry consumed 2.6 BBF of hardwood lumber and today only 350 million board feet. This is a decrease of 2.25 BBF. It is estimated that the U.S. has lost 70 percent of the entire furniture manufacturing industry.

Hardwood Lumber Markets [4]

During the mid-1990's, domestic hardwood lumber consumption surged as use by construction and remodeling (CR) producers increased. The nearly 1.1 BBF increase in lumber usage by the CR group over a 5-year period (1992–1997) was largely the result of increased use of hardwood material in home construction, as well as larger homes being built. Industrial product manufacturers were the largest users of hardwood lumber, consuming nearly 5 BBF in 1997.

Hardwood lumber consumption by the wood household and office and institutional furniture industries increased between 1992 and 1997, but this increase was offset by decreased use in upholstered furniture. The decreased use of lumber by upholstered furniture manufacturers was the result of increased use of plywood in furniture.

Hardwood lumber consumption by the pallet industry also declined more than 400 MMBF between 1997 and 2002. This reduction was not a function of reduced pallet use but of increased recycling of pallets and pallet parts. One factor that encouraged the pallet industry to adopt recycling was increased prices of lower grade oak lumber resulting from increased flooring production.

Competition [5]

Hardwood lumber competes with several alternative products and imported species. Competitive products used in furniture, cabinets and mill work include composite products such as medium density fiberboard and particle board, composite material, plastic, and imported lumber. Competitive products used in flooring include composite laminated flooring product, products that look like wood, bamboo, and imported hardwood flooring. In addition, competitive industrial pallet products include recycled pallet parts, composite products, plastic, and cardboard.

Price and Cost Trends [6]

Over the last 40 years, trends in interspecies and intergrade hardwood lumber prices have been irregular. In the early 1960s, high and midgrade hard maple commanded high prices while red oak was the least valuable lumber regardless of grade. In the 1980s, high and midgrade oak prices surged, but prices of all grades of maple and yellow-poplar declined. During the 1990s, maple prices increased in all grades while the price of oak increased only in the lower grades. It is important to understand changes in interspecies and intergrade pricing as well as the market forces causing these changes because lumber price reflects the use of these products relative to availability. In addition, species of wood produced in different regions of the country can have different desirable attributes that may be reflected in the price.

The price of hardwood lumber depend on a series of demand and supply interactions in numerous final markets including furniture, pallets, flooring, and kitchen cabinets and on four market levels: final consumer, secondary (furniture etc.), primary (lumber), and timber. Each species and grade designation varies in visual and physical characteristics.

Need for a Program

According to the proponents, the hardwood lumber industry is experiencing one of the worst markets in history. The U.S. cabinet industry consumed 42.7 percent less lumber in 2010 as compared to 2009 as more species and alternative materials replaced U.S. hardwoods. The flooring industry was the largest consumer of U.S. hardwood lumber. Use of U.S. hardwoods in this sector has declined from 1.5 BBF in 2005 to 0.6 BBF in 2010 as competing products and imports replace domestic lumber. The furniture industry has seen a fundamental shift in consumption by U.S. manufacturers. The proponents reported that in 1999, the furniture industry consumed 2.6 BBF of hardwood lumber and today only 350 million board feet. That is a decrease of 2.25 BBF. Estimates are that the U.S. has lost 70 percent of the entire furniture manufacturing sector.

Additionally, at the request of the U.S. and Canadian governments, the U.S. Endowment for Forestry and Communities (Endowment) was formed in 2006. The Endowment is a non-profit organization that works with public and private sectors to advance the interests of the forestry community. In the past, the industry attempted voluntary assessment efforts to conduct marketing programs, but they were sporadic, underfunded, and narrowly targeted. Since early 2008 the Endowment has directly invested monies to study and catalyze the potential of commodity checkoffs to help grow the market for wood and wood products.

As a result of the Endowment's efforts, the BRC was subsequently formed to pursue an industry research and promotion program. The BRC is comprised of 14 members representing the United States. The BRC submitted an initial proposal for a program to USDA in June 2011.

The BRC proposed a program that would be financed by an assessment on hardwood lumber manufacturers and hardwood plywood manufacturers and administered by a board of industry members selected by the Secretary. The initial assessment rate would be: (1) $1.00 per $1,000 in sales of hardwood lumber and hardwood lumber products; (2) $0.75 per $1,000 in sales of hardwood lumber value-added products; and (3) $3.00 per $1,000 in sales of hardwood plywood. These assessments should generate about $10 million annually. The program would exempt those hardwood lumber manufacturers with annual sales of less than $2 million and hardwood plywood manufacturers with annual sales of less than $10 million. Exports from the United States would also be exempt from assessments. The purpose of the program would be to strengthen the position of hardwood lumber and hardwood plywood in the marketplace and maintain and expand markets for hardwood lumber and hardwood plywood. A referendum would be held among eligible hardwood manufacturers and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect. A majority of eligible manufacturers by volume of the commodity represented in the referendum would have to support the program for it to be implemented. The specific provisions of the program are discussed below.

Provisions of Proposed Program

Definitions

Pursuant to section 513 of the 1996 Act, §§ 1211.1 through 1211.37 of the proposed Order define certain terms that would be used throughout the

[4] Forest Products Journal, Volume 58, No. 5, Forest Products Society.

[5] Dr. William G. Luppold, Ph.D. USDA Forest Service, 2012.

[6] Dr. William G. Luppold, Ph.D. and Matthew S. Baumgardner, Examination of Lumber Price Trends for Major Hardwood Species, 2007.

Order. Several of the terms are common to all research and promotion programs authorized under the 1996 Act while other terms are specific to the proposed hardwood lumber Order.

Section 1211.1 would define the term ''Act'' to mean the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

Section 1211.2 would define the term ''Blue Ribbon Committee'' to mean the committee representing businesses that manufacture hardwood lumber in the United States formed to pursue an industry research, promotion, and information program. As specified in proposed § 1211.42, the BRC would conduct the initial nominations for the Hardwood Lumber and Hardwood Plywood Board and submit them to the Secretary. This would be the only role of the BRC under the program.

Section 1211.3 would define the term ''Board'' or ''Hardwood Lumber and Hardwood Plywood Board'' to mean the administrative body established pursuant to § 1211.41, or such other name as recommended by the Board and approved by the Secretary.

Section 1211.4 would define the term ''Brokered sale'' to mean a product that is purchased from a person and resold to a different person without taking physical possession of the product. This term is necessary for assessment purposes because in order to be liable for the assessment collection the individual must take possession of the product.

Section 1211.5 would define the term ''Concentration yard'' to mean an operation with kilns that purchases hardwood lumber from sawmills, or wholesalers or by means of a brokered sale and may grade, sort, dry and/or surface the lumber. It excludes distribution yards which do not have kilns.

Section 1211.7 would define the term ''Covered hardwood'' to mean hardwood lumber, hardwood lumber products, hardwood value-added lumber products, and hardwood plywood to which an assessment has been or may be levied pursuant to the Order.

Section 1211.9 would define the term ''Fair market value'' to mean, with respect to covered hardwood, the value of the lumber as reported by a credible and reliable source. Such source shall be determined by the Secretary from recommendations from the Board.

Section 1211.10 would define the term ''Fiscal period'' or ''Fiscal year'' to mean a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Secretary.

Section 1211.11 would define the term ''Green lumber'' to mean hardwood lumber that has not been kiln dried.

Section 1211.12 would define the term ''Hardwood lumber'' to mean timber from the wood of a cypress tree or a deciduous, broad leafed tree that could include but not limited to: aspen, birch, cypress, popular, maple, cherry, walnut and oak that has been sawn into boards or blocks by a sawmill in the United States.

Section 1211.13 would define the term ''Hardwood lumber manufacturer'' to mean a person who cuts raw hardwood logs into hardwood lumber, hardwood lumber products, or a person who kiln dries green hardwood lumber to create hardwood lumber, hardwood lumber products or hardwood lumber value-added products.

Section 1211.14 would define the term ''Hardwood lumber products'' to mean hardwood lumber that has been transformed from timber or green lumber into products that remain boards or blocks such as surfaced boards, ties, cants, or pallet stock (the hardwood lumber contained in pallet stock is assessed if produced and transferred within the same company). The transfer definition is discussed under section 1121.36. For purposes of this order, the term hardwood lumber products does not include products which are transformed from boards or blocks of lumber into other products, such as furniture, cabinetry, and constructed pallets because the proponents proposed to assess the raw or green hardwood lumber used in certain but not all products. Further, hardwood lumber is used in many finished products which could become difficult to administer.

Section 1211.15 would define the term ''Hardwood lumber value-added product manufacturer'' to mean a person who has a sawmill or who uses kilns to dry hardwood lumber that is then used to manufacture hardwood lumber value-added products.

Section 1211.16 would define the term ''Hardwood lumber value-added products'' to mean products which remain in the general shape of boards, but have undergone additional processing beyond surfacing or cutting to a particular size. Hardwood lumber value-added products include solid wood strip flooring, all-sides surfaced boards, finger-jointed strips ripped to width, and moldings but does not include multi-component or further manufactured finished products such as furniture, cabinets, pallets, or componentry for cabinets or furniture.

Section 1211.17 would define the term ''Hardwood plywood'' to mean a panel product, the decorative face of which is made from hardwood lumber or veneer, intended for interior use composed of an assembly of layers or piles of veneer or veneers in combination with lumber core, particleboard, medium density fiberboard core, hardwood core, or special core or special back material joined with an adhesive.

Section 1211.18 would define the term ''Hardwood plywood manufacturers'' to mean a person who utilizes hardwood logs or veneer to create hardwood plywood.

Section 1211.19 would define the term ''Information'' to mean activities or programs designed to disseminate the results of research, new and existing marketing programs, new and existing marketing strategies, new and existing uses and applications, and to enhance the image of hardwood lumber and hardwood plywood and the forests from which it comes. This would include consumer information, which would mean any action taken to provide information to, and broaden the understanding of, the general public regarding covered hardwood. This would also include industry information, which would mean information and programs that would enhance the image of the hardwood lumber and hardwood plywood industry.

Section 1211.20 would define the term ''Kiln dried'' to mean hardwood lumber that has been seasoned in a kiln by means of artificial heat, humidity and circulation.

Section 1211.21 would define the term ''Market or Marketing'' to mean the sale or other disposition of covered hardwood in interstate, foreign, or intrastate commerce.

Section 1211.22 would define the term ''Manufacturer'' to mean domestic manufacturers of covered hardwood lumber as defined in this Order.

Section 1211.23 would define the term ''Manufacturing'' to mean the process of transforming logs into hardwood lumber, or the process of creating hardwood lumber products, value-added hardwood lumber products, or hardwood plywood.

Section 1211.24 would define the term ''Member'' to mean a member appointed by the Secretary to the Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board.

Section 1211.25 would define the term ''Order'' to mean an order issued by the Secretary under Section 514 of the Act that provides for a program of

generic promotion, research, and information of covered hardwood under the Act.

Section 1211.26 would define the terms ''part'' and ''subpart.'' The term ''part'' would mean the Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order would be a ''subpart'' of the part.

Section 1211.27 would define the term ''Person'' to mean any individual, group of individuals, partnership, corporation, association, joint stock company, cooperative, or any other legal entity.

Section 1211.28 would define the terms ''Programs, plans and projects'' to mean research, promotion, and information programs, plans, or projects established under the Order.

Section 1211.29 would define the term ''promotion'' to mean any action taken, including paid advertising, public relations and other communications, and promoting the results of research, that presents a favorable image of covered hardwood to the public and to any and all consumers, with the intent of improving the perception, markets and competitive position of covered hardwood lumber and stimulating sales of covered hardwood lumber.

Section 1211.30 would define the term ''research'' to mean any activity that advances the position of covered hardwood in the marketplace that includes any type of test, study, or analysis designed to advance the knowledge, image, desirability, use, marketability, production, product development, or quality of covered hardwood. This term includes the communication of the results of any research conducted under this Order.

Section 1211.31 would define the term ''Sales'' to mean the total dollar purchases of covered hardwood that are purchased from a hardwood lumber or plywood manufacturer subject to the assessment. ''Sales'' for purposes of the assessment does not include freight or discounts, and brokered sales are not included within the meaning of sale.

Section 1211.37 would define the term ''Transfer'' to mean when a vertically integrated manufacturing plant in which post-manufacturing operations turns covered hardwoods into a non-assessed product while remaining under the control of the same person. This function regularly occurs in the industry. Such a vertically integrated manufacturing plant shall assign a sales price based on the fair market value of the covered hardwood at the time it leaves the initial manufacturing operation to determine the assessment to be paid. Fair market value is defined in section 1211.9 of the proposed order.

Sections 1211.6, 1211.8, 1211.25, 1211.27, 1211.28, 1211.32, 1211.33, 1211.34, 1211.35, and 1211.37 would define the terms ''Conflict of interest,'' ''Department or UDSA,'' ''Order,'' ''Person,'' ''Programs, plans and projects,'' ''Secretary,'' ''State,'' ''Suspend,'' ''Terminate,'' and ''United States,'' respectively. The definitions are the same as those specified in section 513 of the Act.

Establishment of the Board

Pursuant to section 515 of the 1996 Act, §§ 1211.41 through 1211.49 of the proposed Order would detail the establishment and membership of the proposed Hardwood Lumber and Hardwood Plywood, Promotion, Research and Information Board, nominations and appointments, the term of office, removal and vacancies, procedure, reimbursement and attendance, powers and duties, contracting, and prohibited activities.

Section 1211.41 would specify the Board establishment and membership. The Board would be composed of 28 members comprised of owners or employees of hardwood lumber manufacturers or hardwood plywood manufacturers for the U.S. market who manufacture and domestically sell $2 million or more of hardwood lumber, products and/or value-added products, or $10 million or more of hardwood plywood in the United States during a fiscal period. Seats on the Board would be apportioned based on the volume of covered hardwood produced and sold in the geographical areas. For the purposes of the geographical distribution of the Board membership, the proponents used State data from the 2008 Current Industrial Report. That report has been discontinued and State estimates were also discontinued four years ago. In the future the Board could use data from the U.S. Forest Service's Timber Product Output Program or other source approved by the Secretary.

The Board would be composed of 28 members. Twenty-two members would be hardwood lumber manufacturers and would be allocated to districts in the United States based on the volume of hardwood lumber produced in and sold from the respective district. Of the 22 members, six would be from District 1, four members would be from District 2, five members would be from District 3, six members would be from District 4, and one member would be from District 5. One member would be a hardwood lumber value-added manufacturer that manufactures flooring products. This would allow the unfinished flooring industry to be represented on the Board. This seat can be from any State within the United States. Five members would be hardwood plywood manufacturers. Of the five members designated as hardwood plywood manufacturers, three members would be from the States that are west of the Mississippi River and two members would be from the States east of the Mississippi River.

The BRC also opted to have no alternate Board members. This would encourage industry members who seek representation and serve on the Board to be committed to their service and participate in all Board meetings.

Every 5 years the Board must review the geographical distribution of the volume of covered hardwood produced and sold within the United States by hardwood lumber manufacturers and hardwood plywood manufacturers. If warranted, the Board would recommend to the Secretary that the Board membership be reapportioned appropriately to reflect such changes. The distribution of volumes between districts also shall be considered. Any changes in Board composition would be implemented by the Secretary through notice and comment rulemaking.

Section 1211.42 of the proposed Order would specify Board nominations and appointments. The initial nominations would be submitted to the Secretary by the BRC. This would be the only role of the BRC under the program. The BRC would publicize the nomination process, using trade press or other means it deems appropriate, and outreach to all hardwood lumber, hardwood lumber products and hardwood lumber value-added manufacturers who sold $2 million or more of any assessed products per fiscal year. The BRC would also publicize the nomination process to hardwood plywood manufacturers who sold $10 million or more of hardwood plywood per fiscal year. The BRC could use regional caucuses, mail or other methods to solicit potential nominees and would work with USDA to help ensure that all interested persons are apprised of the nomination process. The BRC could also solicit nominees through existing regional hardwood lumber, hardwood lumber products, hardwood lumber value-added products and hardwood plywood organizations. The BRC would submit the nominations to the Secretary and recommend two nominees for each Board position. The nominations to the Board should reasonably represent large, medium, and small-sized operations. In addition to

the BRC nominations for the initial board, nominees may be submitted directly to USDA if accompanied by the signatures of at least 20 persons who would pay assessments under the Order. The BRC suggested that 20 signatures would be appropriate to show support for such nominee. In addition, nominees for the initial Board may provide a short background statement outlining their qualifications and desire to serve on the Board. The Secretary would select the members of the Board from the submitted nominations.

Regarding subsequent nominations, the Board would solicit nominations as described in the previous paragraph, except that nominations may not be submitted directly to the Secretary by third parties after the initial Board nominations. Nominees would have the opportunity to provide the Board a short background statement outlining their qualifications and desire to serve on the Board.

Manufacturers who manufacture covered hardwood in more than one district could seek nomination in only the district in which they manufacture the majority of their volume of covered hardwood. The names of manufacturer nominees would be placed on a ballot by district. The ballots along with the background statements would be mailed to manufacturers in each respective district for a vote. Manufacturers who manufacture covered hardwood in more than one district could only vote in the district in which they manufacture the majority of their hardwood lumber or hardwood plywood. The votes would be tabulated for each district with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position would be submitted to the Secretary. No two members would be employed by a single corporation, company, partnership, or any other legal entity in the United States.

The Board would submit nominations to the Secretary at least 6 months before the new Board term begins. The Secretary would select the members of the Board from the nominations submitted by the Board.

In order to provide the Board flexibility, the Board could recommend to the Secretary modifications to its nomination procedures. Any such modifications would be implemented through notice and comment rulemaking by the Secretary.

Section 1211.43 of the proposed Order would specify the term of office. With the exception of the initial Board, each Board member would serve a three-year term or until the Secretary selected his or her successor. Each term of office would begin on January 1 and end on December 31. No member could serve more than two consecutive terms, excluding any term of office less than three years. For the initial board, the terms of Board members would be staggered for two, three, and four years so that the subsequent terms of office of approximately one-third of the Board expire in any given year.

Section 1211.44 of the proposed Order would specify criteria for the removal of members and for filling vacancies. If a Board member ceased to own or work for or be affiliated with a manufacturer or ceased to do business in the district he or she represented, such position would become vacant. Additionally, the Board could recommend to the Secretary that a member be removed from office if the member consistently refused to perform his or her duties or engaged in dishonest acts or willful misconduct. The Secretary can remove the member if he or she finds that the Board's recommendation shows adequate cause. The Secretary may remove a member of the Board without Board recommendation, upon showing of adequate cause, including the failure to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act. If a position became vacant, nominations to fill the vacancy would be conducted using the nominations process as proposed in § 1211.42 of the Order. A vacancy would not be required to be filled if the unexpired term is less than six months.

Section 1211.45 of the proposed Order would specify procedures of the Board. A majority of the Board members (15) would constitute a quorum. A member may attend a meeting by electronic means and be considered present for purposes of a quorum. All votes at a convened Board meeting or any committees will be cast in person or by electronic or telephoning if participating in the meeting in this manner. Proxy voting would not be permitted. A motion would carry if supported by more than a majority of those Board members present or participating by electronic means.

The proposed Order would also provide for the Board to take action, in lieu of voting at a properly convened meeting, by mail, telephone, electronic mail, facsimile, or any other electronic means when the chairperson believes it is necessary. Actions taken under these procedures would be valid only if all members and the Secretary were notified of the meeting and all members were provided the opportunity to vote and if supported by more than 50 percent of Board members present or participating by electronic or other means. Additionally, all votes would have to be confirmed in writing and recorded in Board minutes.

The proposed Order would specify that Board members would serve without compensation. However, Board members would be reimbursed for reasonable travel expenses, as approved by the Board, incurred when performing Board business.

Section 1211.47 of the proposed Order would specify powers and duties of the Board. These are similar in promotion programs authorized under the 1996 Act. They include, among other things, to administer the Order and collect assessments; to develop bylaws and recommend regulations necessary to administer the Order; to select a chairperson and other Board officers; to create an executive committee and form other committees and subcommittees as necessary; to hire staff or contractors; to provide appropriate notice of meetings to the industry and USDA and keep minutes of such meetings; to develop programs and enter into contracts to implement programs subject to USDA approval; to submit a budget to USDA for approval 60 calendar days prior to the start of the fiscal year; to borrow funds necessary to cover startup costs of the Order; to invest Board funds pursuant to the Act; to have its books audited by an outside certified public accountant at the end of each fiscal period and at other times as requested by the Secretary; to report its activities to manufacturers for the U.S. market; to make public an accounting of funds received and expended; to receive, investigate and report to the Secretary complaints of violations of the Order or regulations; to act as an intermediary between the Secretary and any manufacturer, to recommend changes to the assessment rate as provided in this part; to borrow funds necessary for startup expenses of the Order; and to recommend amendments to the Order as appropriate.

Section 1211.48 of the proposed Order would specify contract responsibilities of the Board. Also, this section would include procedures for developing contracts with vendors and items that each contract should include. All contracts entered into by the Board must be approved by the Secretary before becoming effective.

Section 1211.49 of the proposed Order would specify prohibited activities that are common to all promotion programs authorized under

the 1996 Act. In summary, the Board nor its employees and agents could engage in actions that would be a conflict of interest; use Board funds to lobby (influencing legislation or governmental action or policy, by local, state, Federal, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to the Order); and engage in any advertising or activities that may be false, misleading or disparaging to another agricultural commodity.

Expenses and Assessments

Pursuant to sections 516 and 517 of the 1996 Act, §§ 1211.50 through 1211.53 of the proposed Order detail requirements regarding the Board's budget and expenses, financial statements, assessments, and exemption from assessments. At least 60 calendar days before the start of the fiscal period and as necessary during the year, the Board would submit a budget to USDA for approval covering its projected expenses. The budget must include a summary of anticipated revenue and expenses for each program along with a breakdown of staff and administrative expenses. Except for the initial budget, the Board's budgets should include at least one preceding fiscal period's budget for comparative purposes.

Each budget must provide for adequate funds to cover the Board's anticipated expenses. Any amendment or addition to an approved budget must be approved by USDA, including shifting of funds from one program, plan or project to another. The Board would be authorized to incur reasonable expenses for its maintenance and functioning. During its first year of operation, the Board could borrow funds for startup costs and capital outlay. Any borrowed funds would be subject to the same fiscal, budget, and audit controls as other funds of the Board.

The Board could also accept voluntary contributions. Any contributions received by the Board would be free from encumbrances by the donor and the Board would retain control over use of the funds. The Board would also be required to reimburse USDA for all costs incurred by USDA in overseeing the Order's operations, including all costs associated with referenda.

The Board would be limited to spending no more than 15 percent of its available funds for administration, maintenance, and the functioning of the Board. This limitation would begin three fiscal years after the date of the establishment of the Board. Reimbursements to USDA would not be considered administrative costs. As an example, if the Board received $15 million in assessments during fiscal year 5, and had available $1 million in reserve funds, the Board's available funds would be $16 million. In this scenario, the Board would be limited to spending no more than $2.4 million (.15 × $16 million) on administrative costs. The Board could also maintain a monetary reserve and carry over excess funds from one fiscal period to the next. However, such reserve funds could not exceed one fiscal year's budgeted expenses. For example, if the Board's budgeted expenses for a fiscal year were $15 million, it could carry over no more than $15 million in reserve. With approval of the Secretary, reserve funds could be used to pay expenses.

The Board could invest its revenue collected under the Order in the following: (1) Obligations of the United States or any agency of the United States; (2) General obligations of any State or any political subdivision of a State; (3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve; and (4) Obligations fully guaranteed as to principal interest by the United States.

The Board would be required to submit to USDA financial statements on a quarterly basis, or at any other time as requested by the Secretary. Financial statements should include, at a minimum, a balance sheet, an income statement, and an expense budget.

Assessments

The Board's programs and expenses would be funded through assessments on covered hardwood, other income, and other funds available to the Board. The Order would provide for an initial assessment rate of: (1) $1.00 per $1,000 in sales of hardwood lumber and hardwood lumber products; (2) $0.75 per $1,000 in sales of hardwood lumber value-added products; and (3) $3.00 per $1,000 in sales of hardwood plywood. Hardwood plywood is a higher value-added product than the other lumber categories, and therefore is assessed at a higher level.

The intent is to assess the green (raw) hardwood lumber. Sales rather than production or volume provides a better measurement to apply assessments because of the regional differences in the production of the different species of wood. There are no consistent uniform measurements or sizes of green hardwood lumber because of the many different species of hardwood and its uses. In addition, the quantity of hardwood lumber contained in assessed hardwood lumber products and value-added products varies according to the products manufactured.

The following table summarizes the assessment rates mentioned above:

	Description	Assessment rate	Allowable deductions
Hardwood lumber	—hardwood logs turned into lumber (raw green lumber).	$1/$1,000 in sales	N/A.
Hardwood lumber product	—stays a board or block (a little more processed than green lumber).	$1/$1,000 in sales	—deduct the hardwood lumber purchase.
Hardwood value-added products.	—flooring and molding (stays the shape of a board but has undergone additional processing—does NOT include multi-component or further manufactured products such as furniture, cabinets, cabinet doors, prefinished or engineered flooring, pallets, or dimension or glued components for cabinets or furniture..	$0.75/$1,000 in sales	—deduct the hardwood lumber purchase.
Hardwood plywood	—plywood	$3/$1,000 in sales	N/A.

Manufacturers like sawmills cut (raw) green hardwood logs into hardwood lumber that remain boards or blocks or sometimes kiln dry green hardwood lumber to create hardwood lumber that can be further processed into hardwood lumber products by them or other manufacturers. This green hardwood lumber would be assessed at $1.00 per $1,000 in sales of covered hardwood lumber.

Other manufacturers like concentration yards cut or buy (raw) green hardwood logs and kiln dry the green hardwood lumber to further

manufacture hardwood lumber products. Sawmills can also further manufacture boards or blocks into hardwood lumber products. These hardwood lumber products include: Products that remain hardwood lumber boards or blocks such as surface boards, ties, cants, strips, crane mat material or pallet stock (the hardwood lumber contained in pallet stock is assessed if produced and transferred within the same company). The hardwood lumber products manufactured (covered hardwood) would be assessed at $1.00 per $1,000 in sales of hardwood minus the dollar value of any green hardwood lumber purchases. For example, if a concentration yard has annual sales of hardwood lumber products of $5 million and has annual green hardwood lumber purchases of $1 million, the calculated assessment would be $4 million. The $1 million dollars of green hardwood lumber purchases is subtracted from the annual sales of hardwood lumber products because a manufacturer has already paid the assessment on the green hardwood lumber.

A hardwood lumber value-added product manufacturer who operates a sawmill or a concentration yard that manufactures hardwood lumber value-added products would be assessed as follows: Total assessment would be $0.75 for every $1,000 in value-added product sales, plus $1 for every $1,000 in green and kiln dried lumber sales, minus $1 for every $1,000 in green and kiln dried lumber purchases. This computation is necessary to capture the purchases and sales of green hardwood lumber by this manufacturer that may be used to manufacture hardwood value-added products. Hardwood lumber value-added products include solid wood unfinished strip flooring, all-sides surfaced boards, moldings; and these products would be assessed at a lesser amount to take into account the amount of hardwood lumber contained in the finished product. In addition, the assessed value of any green hardwood lumber purchases made would be subtracted since that assessment has already been paid by a manufacturer. For example, if a hardwood lumber value-added products manufacturer has annual sales of hardwood lumber value-added products of $16 million, $4 million in sales of green hardwood lumber, and annual green hardwood lumber purchases of $10 million, the calculated assessment would be $6,000 ($16 million × .75 plus $4 million × 1.0 minus $10 million × 1.0 equals $6 million divided by $1000 equals $6,000 in assessment owed). The following worksheet illustrates how assessments are calculated:

See computation example below:

Annual SALES of hardwood lumber value-added products	(a)
Multiply (a) by .75 for every $1,000 in sales	(b)
Annual SALES of hardwood lumber (raw) green and kiln dried lumber	(c)
Multiply (c) by $1 for every $1,000 in (raw) green and kiln dried lumber	(d)
Add (b) and (d)	(e)
Annual PURCHASES of hardwood lumber (raw) green and kiln dried lumber	(f)
Multiply (f) by $1 for every $1,000 purchases of hardwood lumber (raw) green and kiln dried lumber	(g)
Subtract (g) from (e) = TOTAL ASSESSMENT DUE	Due

The assessment rate for kiln dried and pallet sales that are manufactured by vertically integrated pallet manufacturers would be based on the fair market value of the green, kiln dried and pallet sales that the vertically integrated manufacturer cut and transferred or sold to themselves. Subtracted from that value is dollar sales of green or kiln dried lumber. Finally, subtracted from that value are annual green hardwood purchases times $.001. This formula is necessary to take into account covered hardwood lumber that is cut and transferred within the same company and covered hardwood lumber purchases from other manufacturers used in the manufacturing of pallets. Pallets may be manufactured using covered hardwood from different manufacturers. Pallet manufactured products include hardwood pallet lumber, cants, crane mats and pallet stock produced and transferred within the same company.

For example, if an integrated pallet manufacturer has a fair market value of hardwood pallet lumber sales of $10 million, $5 million in sales of hardwood lumber, and annual hardwood lumber purchases of $4 million; the calculated assessment would be $1,000 ($10 million minus $5 million minus $4 million multiplied by $.001).

The fair market value of lumber would be determined by a credible and reliable source. Such source shall be determined by the Secretary from recommendations from the Board. The proponents have indicated there are currently two companies that could compute the fair market values of hardwood lumber that the Board could recommend to the Secretary to define this value.

Brokered sales of hardwood lumber or hardwood lumber products are excluded from the calculation of assessments as the proponents determined these transactions would be difficult to administer under the program.

Hardwood plywood manufacturers would pay at a rate of $3.00 per $1,000 in sales of hardwood lumber plywood. Hardwood plywood is a higher value-added product than the other lumber categories and is assessed at higher level. For example, if a hardwood plywood manufacturer has $25 million in sales of hardwood plywood the assessment would be $75,000.

Manufacturers would pay assessments based on sales of hardwood lumber, hardwood lumber products, hardwood lumber value-added products and hardwood plywood. The Board can recommend to the Secretary a change in the assessment rate. Any such change would be implemented through notice and comment rulemaking by the Secretary. Manufacturers would be required to pay their assessments owed to the Board on a quarterly basis, on a form that the Board shall develop, no later than the 30th calendar day of the month following the end of the quarter in which the hardwood lumber, hardwood lumber products, value-added, or hardwood plywood was marketed. Thus, the January to

December fiscal year would have four quarters ending the last day of March, June, September, and December, respectively. Assessments would be due April 30th, July 30th, October 30th, and January 30th. As an example, assessments for lumber marketed in January would be due to the Board by April 30th. The Order would provide authority for the Board to impose a late payment charge and interest for assessments overdue to the Board by 60 calendar days. The late payment charge and rate of interest would be prescribed in the Order's regulations issued by the Secretary.

Exemptions

The Order would provide for two exemptions. First, hardwood lumber manufacturers, hardwood lumber product manufacturers and hardwood lumber value-added products manufacturers with combined annual sales of less than $2 million of any covered hardwood during a fiscal year would be exempt from paying assessments. In addition, hardwood plywood manufacturers with annual sales of less than $10 million during a fiscal year are exempt from paying assessments.

Manufacturers would apply to the Board for an exemption prior to the start of the fiscal year. This would be an annual exemption; entities would have to reapply each year. Manufacturers would have to certify that they expect to market less than the respective sales for each covered entity under the proposed Order for the applicable fiscal year. The Board could request past sales data to support the exemption request. The Board would then issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer.

Once approved, manufacturers would not have to pay assessments to the Board for the applicable fiscal year unless they exceed the threshold.

Hardwood lumber manufacturers and hardwood plywood manufacturers who did not apply to the Board for an exemption and had sales of less than $2 million or sales less than $10 million, respectively, during the fiscal year would receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. Board staff would determine the assessments paid and refund the manufacturer accordingly. On the other hand, hardwood lumber manufacturers and hardwood plywood manufacturers who receive an exemption certificate but have sales more than $2 million and $10 million, respectively, during the fiscal year would have to pay the Board the applicable assessments owed within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board.

The Board could recommend additional procedures to administer the exemption as appropriate. Any procedures would be implemented through notice and comment rulemaking by the Secretary.

A manufacturer of covered hardwood lumber who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures covered hardwood lumber that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation would be exempt from payment of assessments.

Promotion, Research and Information

Pursuant to section 516 of the 1996 Act, §§ 1211.60 through 1211.62 of the proposed Order would detail requirements regarding promotion, research and information programs, plans and projects authorized under the Order and approved by the Secretary. The Board would develop and submit to the Secretary for approval programs, plans and projects regarding promotion, research, education, and other activities, including consumer and industry information and advertising designed to, among other things, build markets for covered hardwood. The Board would be required to evaluate each plan and program to ensure that it contributes to an effective promotion program. Research projects could include the energy efficiency and preferability of covered hardwood. Covered Hardwood of all origins would have to be treated equally by the Board, and no program, plan, or project could be false, misleading, or disparage against another agricultural commodity.

The Order would also require that, at least once every five years, the Board fund an independent evaluation of the effectiveness of the Order and programs conducted by the Board. Finally, the Order would specify that any patents, copyrights, trademarks, inventions, product formulations and publications developed through the use of funds received by the Board would be the property of the U.S. Government, as represented by the Board. These along with any rents, royalties and the like from their use would be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and could be licensed with approval of the Secretary.

Reports, Books and Records

Pursuant to section 515 of the 1996 Act, §§ 1211.70 through 1211.72 specify the reporting and recordkeeping requirements under the proposed Order as well as requirements regarding confidentiality of information.

Hardwood lumber and plywood manufacturers would be required to submit periodically to the Board certain information as the Board may recommend with approval of the Secretary. Specifically, manufacturers would submit a report to the Board that would include, but not be limited to, the manufacturer's name, address, and telephone number; the annual sales of covered hardwood lumber and hardwood plywood; and the sales of covered hardwood lumber and hardwood plywood for which assessments were paid. Hardwood lumber and plywood manufacturers would submit this report at the same time they remit their assessments to the Board. Hardwood lumber and plywood manufacturers who received a certificate of exemption from the Board would not have to submit such a report to the Board. However, exempt hardwood lumber manufacturers and hardwood plywood manufacturers who have sales over the exemption threshold of $2 million and $10 million, respectively, during the fiscal year would have to pay the Board the applicable assessments owed within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board.

Additionally, hardwood manufacturers including those who are exempt, would be required to maintain books and records needed to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or USDA's employees or agents. Hardwood manufacturers would be required to maintain such books and records for two years beyond the applicable fiscal period.

The Order would also require that all information obtained from persons subject to the Order as a result of proposed recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Board and USDA. Such information could only be disclosed if the Secretary considered it relevant, and the information were revealed in a judicial proceeding or administrative hearing brought at the direction or at the request of the Secretary or to which the Secretary or any officer of USDA were a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to the Order, if the statements did not identify the information furnished by any person, or

the publication, by direction of the Secretary, of the name of any person violating the Order and a statement of the particular provisions of the Order violated.

Miscellaneous Provisions

Referenda

Pursuant to section 518 of the 1996 Act, § 1211.81(a) of the proposed Order specifies that the program would not go into effect unless it is approved by a majority of hardwood manufacturers and hardwood plywood manufacturers who represent a majority of the volume of covered hardwood lumber represented in the referendum who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood lumber.

Section 1211.81(b) of the proposed Order specifies criteria for subsequent referenda. Under the Order, a referendum would be held to ascertain whether the program should continue, be amended, or be terminated. This section specifies that a referendum would be held 5 years after the Order becomes effective, and every 7 years thereafter, to determine whether hardwood lumber manufacturers and hardwood plywood manufacturers favor continuation of the Order. The Order would continue if favored by hardwood manufacturers and hardwood plywood manufacturers who represent a majority of the volume of covered hardwood lumber represented in the referendum who, during a representative period determined by the Secretary, was engaged in the manufacturing of covered hardwood lumber.

Additionally, a referendum could be conducted at the request of the Secretary. A referendum could also be conducted at the request of 10 percent or more of the number of persons eligible to vote in a referendum under the Order. Finally, a referendum could be conducted at any time as determined by the Secretary.

Other Miscellaneous Provisions

Sections 1211.80 and §§ 1211.82 through 1211.88 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after termination; address personal liability, separability, and amendments; and provide OMB control numbers. These provisions are common to all research and promotion program authorized under the 1996 Act.

In addition, the Secretary shall suspend or terminate an order or a provision of an order if Secretary finds that an order or a provision of an order obstructs or does not tend to effectuate the purpose of this subtitle, or if the Secretary determines that the order or a provision of an order is not favored by persons voting in a referendum.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (manufacturers) as those having annual receipts of no more than $7.0 million. According to information submitted by the proponents, it is estimated that there are 2,804 hardwood lumber manufacturers and 36 hardwood plywood manufacturers in the United States annually. This number represents separate business entities and includes exempted and assessed entities under the Order; one business entity may include multiple sawmills. It is estimated that 85 to 90 percent of the manufacturers are small businesses.

This rule invites comments on a proposed industry-funded promotion, research, and information program for hardwood lumber and hardwood plywood. Hardwood lumber products are used in residential and commercial construction includes flooring, furniture, moldings, doors and kitchen cabinets. Industrial products include pallets, wood dunning, and railroad ties. The program would be financed by an assessment on hardwood lumber, hardwood lumber products, hardwood lumber value-added, and hardwood plywood manufacturers and would be administered by a board of industry members selected by the Secretary. The initial assessment rate would be: (1) $1.00 per $1,000 in sales of hardwood lumber and hardwood lumber products; (2) $0.75 per $1,000 in sales of hardwood lumber value-added products; and (3) $3.00 per $1,000 in sales of hardwood plywood. These assessments should generate about $10 million annually. The program would exempt small hardwood lumber manufacturers with annual sales of less than $2 million and small hardwood plywood manufacturers with annual sales of less than $10 million. Exports would be exempted from the program and imports would not be covered under the program. The purpose of the program would be to strengthen the position of covered hardwood in the marketplace and maintain and expand markets for United States covered hardwood. By strengthening demand, a research and promotion program benefits all businesses both small and large. A referendum would be held among eligible hardwood lumber manufacturers and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect. The program is authorized under the 1996 Act. In addition, the numbers used in the RFA analysis herein represent the total universe of manufacturers known to USDA and not those who may be eligible to vote in the referendum.

Regarding the economic impact of the proposed Order on affected entities, hardwood lumber, hardwood lumber products, hardwood lumber value-added product, and hardwood plywood manufacturers would be required to pay assessments to the Board. As previously mentioned, the initial assessment rate would be: (1) $1.00 per $1,000 in sales of hardwood lumber and hardwood lumber products; (2) $0.75 per $1,000 in sales of hardwood lumber value-added products; and (3) $3.00 per $1,000 in sales of hardwood plywood. The percentage of revenue represented by the assessment rate would be 0.01 percent for sales of hardwood lumber and hardwood lumber products, 0.0075 percent for sales of hardwood lumber value-added products, and 0.03 percent for sales of hardwood plywood. Assessment revenue is expected to be around $10 million dollars. Thus, the percentage revenue represented by the assessment rate would be well under one percent of sales. Any change in the assessment rate may be changed only upon approval of the Board and only after the Secretary has conducted rulemaking.

The Order would provide for two exemptions. First, hardwood lumber manufacturers, hardwood lumber product manufacturers and hardwood lumber value-added products manufacturers with annual sales less than $2 million of any assessed covered hardwood combined during a fiscal year would be exempt from paying assessments. In addition, hardwood plywood manufacturers with annual sales of less than $10 million during a fiscal year are exempt from paying assessments. It would be a burden on

small entities to assess the smaller manufacturers under this program.

Regarding the impact on the industry as a whole, the proposed program is expected to grow markets for covered hardwood by increasing the market share of covered hardwood in residential, commercial and industrial product areas. While the benefits of the proposed program are difficult to quantify, the benefits are expected to outweigh the program's costs of approximately $10 million per year, which is less than one percent of sales. Academic researchers have estimated benefit-to-cost ratios for promotion programs across a broad range of commodities in the range of 4:1 to 6:1, indicating that for each dollar of promotion at least 4 to 6 times that amount is generated in new revenues, profit, or ''economic surplus'' to the industry.[7]

Regarding alternatives, the proponents, the BRC, considered various options to the proposed range in assessment rates and various products to be assessed. The BRC believes that $10 million in assessment income is the threshold for an effective program that could help to improve the market for covered hardwood.

The exemption levels reflect what the industry considers a very small business that would be economically affected if covered under the program. In addition, the proponents considered the exemption levels and decided the exemption levels were adequate in order to allow them to obtain sufficient funds to operate an effective program.

The industry explored the merits of a voluntary promotion program. One program, the Hardwood Council, united several major hardwood associations behind a marketing program and collected enough funds to establish a Web site and a limited number of marketing programs. Funding for this program declined as competing demands arose with the supporting associations. In 2009, a renewed effort was put forth organizing the Unified Hardwood Promotion campaign which was funded by various companies and trade associations which resulted in the development of a hardwood logo and tagline. However, given the fragmented nature of the industry and about 3,000 small companies to reach, the level of funding needed was not achieved.

This action would impose additional reporting and recordkeeping burden on manufacturers of hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood manufacturers. Hardwood lumber manufacturers and hardwood plywood manufacturers interested in serving on the Board would be asked to submit a nomination form to the Board indicating their desire to serve or nominating another industry member to serve on the Board. Interested persons could also submit an additional background statement outlining their qualifications to serve on the Board. Hardwood lumber manufacturers and hardwood plywood manufacturers would have the opportunity to cast a ballot and vote for candidates to serve on the Board. Hardwood lumber manufacturers and hardwood plywood manufacturers' nominees to the Board would have to submit a nomination form to the Secretary to ensure they are qualified to serve on the Board.

Additionally, the Order would provide for an exemption for hardwood lumber, hardwood lumber products, and hardwood lumber value-added products manufacturers for the U.S. market with annual sales less than $2 million of any assessed product combined during a fiscal year. In addition, hardwood plywood manufacturers with annual sales of less than $10 million during a fiscal year are exempt from paying assessments. Hardwood lumber manufacturers, hardwood lumber product manufacturers, hardwood lumber value-added products manufacturers and hardwood plywood manufacturers would also be asked to submit a report regarding their sales that would accompany their assessments paid to the Board. Hardwood lumber manufacturers and hardwood plywood manufacturers who would qualify as 100 percent organic under the NOP could submit a request to the Board for an exemption from assessments.

Finally, hardwood lumber manufacturers and hardwood plywood manufacturers who want to participate in the referendum to vote on whether the Order should become effective would have to complete a ballot for submission to the Secretary. These forms are being submitted to the OMB for approval under OMB Control No. 0581–NEW. Specific burdens for the forms are detailed later in this document in the section titled Paperwork Reduction Act. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Regarding outreach efforts, the Blue Ribbon Committee was formed about one year ago and met in person and by conference call more than 10 times each. They have developed a Web site that has been available to the public that details a description of the program under development, related hardwood press articles, timeframes for program development, and Powerpoint presentations used to brief various hardwood lumber audiences. This information can be found at: *www.hardwoodcheckoff.com.* Members of the BRC have presented the hardwood checkoff program across the country at various industry meetings attended by as many as 300 industry participants. In depth articles describing the program have been published in industry media.

While USDA has performed this initial RFA analysis regarding the impact of the proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis, we invite comments concerning potential effects. USDA is also requesting comments regarding the number and size of entities covered under the proposed Order.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of a new information collection and recordkeeping requirements for the proposed lumber program.

Title: Advisory Committee or Research and Promotion Background Information.

OMB Number for background form AD–755: (Approved under OMB No. 0505–0001).

Expiration Date of Approval: 5/31/2015.

Title: Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order.

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act. The information collection concerns a proposal received by USDA for a

[7] Ward, Ronald, Commodity Checkoff Programs and Generic Advertising Choices, 2nd Quarter 2006, 21/(2)).

national research and promotion program for the hardwood lumber industry. The program would be financed by an assessment on hardwood lumber manufacturers and hardwood lumber plywood manufactures and would be administered by a board of industry members selected by the Secretary. The program would provide for an exemption for hardwood lumber, hardwood lumber products, hardwood lumber value-added products manufactured for the U.S. market with annual sales less than $2 million of any assessed product combined during a fiscal year. In addition, hardwood plywood manufacturers with annual sales of less than $10 million during a fiscal year are exempt from paying assessments. A referendum would be held among eligible hardwood lumber manufacturers and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect. The purpose of the program would be to help build the market for hardwood lumber.

In summary, the information collection requirements under the program concern Board nominations, the collection of assessments, and referenda. For Board nominations, hardwood lumber manufacturers and hardwood plywood manufacturers interested in serving on the Board would be asked to submit a ''Nomination Form'' to the Board indicating their desire to serve or to nominate another industry member to serve on the Board. Interested persons could also submit a background statement outlining qualifications to serve on the Board. Except for the initial Board nominations, hardwood lumber manufacturers and hardwood plywood manufacturers would submit a ''Nomination Ballot'' to the Board where they would vote for candidates to serve on the Board. Nominees would also have to submit a background information form, ''AD–755,'' to the Secretary to ensure they are qualified to serve on the Board.

Regarding assessments, hardwood manufacturers and hardwood plywood manufacturers who have sales under the exemption threshold of $2 million and $10 million, respectively, during the fiscal year could submit a request, ''Application for Exemption from Assessments,'' to the Board for an exemption from paying assessments. Hardwood lumber manufacturers and plywood manufacturers would be asked to submit a ''Sales Report'' that would accompany their assessments paid to the Board and report the sales of hardwood lumber or hardwood plywood sold during the applicable period, and the quantity for which assessments were paid. Hardwood lumber manufacturers and hardwood plywood manufacturers who sold less than the exemption threshold of $2 million and $10 million, respectively, during the fiscal year are exempt from paying assessments would not be required to submit this report. Finally, hardwood lumber manufacturers and hardwood plywood manufacturers who would qualify as 100 percent organic under the NOP could submit an ''Organic Exemption Form'' to the Board and request an exemption from assessments.

There would also be an additional burden on hardwood lumber manufacturers and hardwood plywood manufacturers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Information collection requirements that are included in this proposal include:

(1) Nomination Form

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Hardwood lumber manufacturers and hardwood plywood manufacturers.

Estimated Number of Respondents: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 14 hours.

(2) Background Statement

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Hardwood lumber manufacturers and hardwood plywood manufacturers.

Estimated Number of Respondents: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 14 hours.

(3) Nomination Ballot

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Hardwood lumber manufacturers and hardwood plywood manufacturers.

Estimated Number of Respondents: 250.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 62.5 hours.

(4) Background Information Form AD–755 (OMB Form No. 0505–0001)

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hour per response for each Board nominee.

Respondents: Hardwood lumber manufacturers and hardwood plywood manufacturers.

Estimated number of Respondents: 19 (56 for initial nominations to the Board, 0 for the second year, and up to 19 annually thereafter).

Estimated number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 28 hours for the initial nominations to the Board, 0 hours for the second year of operation, and up to 9.5 hours annually thereafter.

(5) Application for Exemption from Assessments

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour per hardwood lumber manufacturer or hardwood plywood manufacturer reporting on hardwood lumber or hardwood plywood sold. Upon approval of an application, hardwood lumber or hardwood plywood manufacturers would receive exemption certification.

Respondents: Hardwood lumber manufacturers and hardwood plywood manufacturers who have sales of $2 million or less and $10 million or less, respectively, annually.

Estimated number of Respondents: 1490.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 372.5 hours.

(6) Sales Report

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per manufacturer.

Respondents: Hardwood lumber manufacturers who sales are more than $2 million (1340) and hardwood plywood manufacturers who sales are more than $10 million (10).

Estimated number of Respondents: 1350.

Estimated number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 2,700 hours.

(7) Organic Exemption Form

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

Respondents: Organic hardwood lumber manufacturers and hardwood plywood manufacturers.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0.5 hour.

(8) Refund of Assessments Paid on Hardwood Lumber

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour.

Respondents: Hardwood lumber manufacturers and hardwood plywood manufacturers.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0.25 hour.

(9) A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per record keeper maintaining such records.

Recordkeepers: Hardwood lumber and plywood manufacturers 2,840.

Estimated number of recordkeepers: 2,840.

Estimated total recordkeeping hours: 1,420 hours.

As noted above, under the proposed program, hardwood lumber manufacturers and hardwood plywood manufacturers would be required to pay assessments and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on hardwood lumber manufacturers and hardwood plywood manufacturers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the fiscal year of their applicability.

An estimated 2,840 respondents would provide information to the Board. The estimated cost of providing the information to the Board by respondents would be $152,196. This total has been estimated by multiplying 4,612 total hours required for reporting and recordkeeping by $38, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly wage were obtained from the U.S. Department of Labor, Bureau of Labor Statistics, publication, ''May 2011 National Occupational Employment and Wage Estimates in the United States'', updated March 29, 2012.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other state programs.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information quarterly would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual hardwood lumber manufacturers and hardwood plywood manufacturers who are subject to the provisions of the 1996 Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

Request for Public Comment Under the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal manufacturing areas in the United States for hardwood lumber and plywood; (d) the accuracy of USDA's estimate of the number of hardwood lumber manufacturers and hardwood plywood manufacturers of hardwood lumber that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) 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.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the same addresses referenced in the **ADDRESSES** section of this rule.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Request for Public Comment in Accordance With Executive Order 13175

This rule invites comments on its effect of the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Comments should be directed as to whether this regulation would or would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

USDA made minor modifications to the proponent's proposal to conform with other similar national research and promotion programs implemented under the 1996 Act.

While the proposal set forth below has not received the approval of USDA, it is determined that this proposed Order is consistent with and would effectuate the purposes of the 1996 Act.

As previously mentioned, for the proposed Order to become effective, it must be approved by hardwood manufacturers and hardwood plywood manufacturers who represent a majority of the volume of covered hardwood lumber represented in the referendum who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood lumber.

Referendum procedures will be published separately in this issue of the **Federal Register**.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Hardwood lumber promotion, Hardwood plywood promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended by adding part 1211 to read as follows:

PART 1211—HARDWOOD LUMBER AND HARDWOOD PLYWOOD PROMOTION, RESEARCH AND INFORMATION ORDER

Subpart A—Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order

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Authority: 7 U.S.C. 7411–7425, 7 U.S.C. 7401.

Subpart A—Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order

Definitions

§ 1211.1 Act.

Act means the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1211.2 Blue Ribbon Committee.

Blue Ribbon Committee means the 14-member committee representing businesses that manufacture hardwood lumber, hardwood lumber products, hardwood lumber value-added products and hardwood plywood in the United States formed to pursue an industry promotion, research and information program.

§ 1211.3 Board.

Board or Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board means the administrative body established pursuant to this part. It may be referred to by such other name as the Board recommends and the Secretary approves.

§ 1211.4 Brokered sale.

Brokered sale is a sale in which product is purchased from a person and resold to a different person without taking physical possession of the product.

§ 1211.5 Concentration yard.

Concentration yard means an operation with kilns that purchases hardwood lumber from sawmills, or wholesalers by means of a brokered sale, and may grade, sort, dry and/or surface the hardwood lumber. It excludes distribution yards that do not have kilns.

§ 1211.6 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in an entity that performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1211.7 Covered hardwood.

Covered hardwood means hardwood lumber, hardwood lumber products, hardwood lumber value-added lumber products, and hardwood plywood to which an assessment has been or may be levied pursuant to the Order.

§ 1211.8 Department or USDA.

Department or USDA means the United States Department of Agriculture or any officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act for the Secretary.

§ 1211.9 Fair market value.

Fair market value means, with respect to covered hardwood, the value of the hardwood lumber as determined by a source approved by the Secretary.

§ 1211.10 Fiscal period or fiscal year.

Fiscal period or year means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Secretary.

§ 1211.11 Green hardwood lumber.

Green hardwood lumber means hardwood lumber that has not been kiln dried.

§ 1211.12 Hardwood lumber.

Hardwood lumber means timber from the wood of a cypress tree or a

deciduous, broad-leafed tree (including but not limited to aspen, birch, cypress, poplar, maple, cherry, walnut and oak) that has been sawn into boards or blocks by a sawmill in the United States.

§ 1211.13 Hardwood lumber manufacturer.

Hardwood lumber manufacturer means a person who cuts (raw) green hardwood logs into hardwood lumber or hardwood lumber products or a person who kiln dries green hardwood lumber to create hardwood lumber, hardwood lumber products or hardwood lumber value-added products in the United States.

§ 1211.14 Hardwood lumber products.

Hardwood lumber products means hardwood lumber that has been transformed into surfaced boards, ties, cants, strips, or pallet stock. For purposes of this Order, hardwood lumber products do not mean products which are transformed from boards or blocks of lumber into products such as furniture, cabinetry, and pallets.

§ 1211.15 Hardwood lumber value-added product manufacturer.

Hardwood lumber value-added product manufacturer means a person who operates a sawmill or a kiln to dry hardwood lumber that is then used to manufacture hardwood lumber value-added products.

§ 1211.16 Hardwood lumber value-added products.

Hardwood lumber value-added products means products which remain in the general shape of hardwood lumber boards, but have undergone additional processing beyond surfacing or cutting to a particular size. Hardwood lumber value-added products include products such as solid wood unfinished strip flooring, all-sides surfaced boards, finger-jointed strips ripped to width, and moldings. It does not include multi-component or further manufactured products such as furniture, cabinets, cabinet doors, prefinished or engineered flooring, pallets, or dimension or glued components for cabinets or furniture.

§ 1211.17 Hardwood plywood.

Hardwood plywood means a panel product, the decorative face of which is made from hardwood veneer intended for interior use composed of an assembly of layers or plies of veneer or veneers in combination with lumber core, particleboard, medium density fiberboard core, hardboard core, or special core or special back material joined with an adhesive.

§ 1211.18 Hardwood plywood manufacturer.

Hardwood plywood manufacturer means a person who utilizes hardwood logs, veneer, or lumber to create hardwood plywood.

§ 1211.19 Information.

Information means activities and programs that are designed to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood and the forests from which it comes in the United States. These include:

(a) *Consumer information,* which means any action taken to provide information to the general public regarding the harvesting, consumption, use, and care of covered hardwood; and

(b) *Industry information,* which means any action taken to provide information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for covered hardwood, and activities to enhance the image of the hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood industries.

§ 1211.20 Kiln dried.

Kiln dried means hardwood lumber that has been seasoned in a kiln by means of artificial heat, humidity and circulation.

§ 1211.21 Market or marketing.

Marketing means the sale or other disposition of covered hardwood in any channel of commerce. To *market* means to sell or otherwise dispose of covered hardwood in any channel of commerce.

§ 1211.22 Manufacturer.

Manufacturer means domestic manufacturers of covered hardwood lumber as defined in this Order.

§ 1211.23 Manufacturing.

Manufacturing means the process of transforming logs into hardwood lumber, or the process of creating hardwood lumber products, hardwood lumber value-added products, or hardwood plywood.

§ 1211.24 Member.

Member means a member appointed by the Secretary to the Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board.

§ 1211.25 Order.

Order means an order issued by the Secretary under Section 514 of the Act that provides for a program of generic promotion, research and information of covered hardwood under the Act.

§ 1211.26 Part and subpart.

Part means the Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The order shall be a *subpart* of such part.

§ 1211.27 Person.

Person means any individual, group of individuals, partnership, corporation, association, joint stock company, cooperative, or any other legal entity.

§ 1211.28 Programs, plans and projects.

Programs, plans and projects mean those research, promotion and information programs, plans, or projects established pursuant to this Order.

§ 1211.29 Promotion.

Promotion means any action taken to present a favorable image of hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood to the general public and to any and all consumers and those who influence consumption of covered hardwood lumber with the intent of improving the perception, markets and competitive position of covered hardwood lumber and stimulating sales of covered hardwood lumber.

§ 1211.30 Research.

Research means any type of test, study, or analysis designed to advance the knowledge, image, desirability, use, marketability, production, product development, or quality of covered hardwood. The term research includes the communication of the results of any research conducted under this part.

§ 1211.31 Sale.

For purposes of calculating the assessment, provided for in § 1211.52, a *sale* means the total dollar purchases of hardwood lumber, hardwood lumber products, hardwood lumber value-added products, or hardwood plywood that are purchased from a hardwood lumber manufacturer or hardwood plywood manufacturer. Sales, for purposes of the assessment, do not include freight or discounts. Brokered sales are not included within the meaning of sale.

§ 1211.32 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Secretary to whom the Secretary has delegated the authority to act on behalf of the Secretary.

§ 1211.33 State.

State means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1211.34 Suspend.

Suspend means to issue a rule under 5 U.S.C. 553, to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1211.35 Terminate.

Terminate means to issue a rule under 5 U.S.C. 553, to cancel permanently the operation of an order or part thereof beginning on a date specified in the rule.

§ 1211.36 Transfer.

Transfer means when a vertically integrated manufacturing plant in which post-manufacturing operations turn an assessed hardwood product (covered hardwood) into a non-assessed product while remaining under the control of the same person.

§ 1211.37 United States or U.S.

United States or U.S. means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board

§ 1211.41 Establishment and membership.

(a) There is hereby established a Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board composed of 28 members who are either owners or employees of hardwood lumber manufacturers or hardwood plywood manufacturers who are appointed by the Secretary. Of the 28 members, 22 shall be hardwood lumber manufacturers, one shall be a hardwood lumber value-added manufacturer who manufactures flooring products, and five shall be hardwood plywood manufacturers.

(b) The five members designated for hardwood plywood manufacturers shall be appointed as follows:

(1) Three members shall be from the States that are west of the Mississippi River; and

(2) Two members shall be from the States that are east of the Mississippi River.

(c) The one member designated as a hardwood lumber value-added products manufacturer of covered hardwood flooring products shall be appointed from nominees from any State within the United States.

(d) The remaining 22 members designated as hardwood lumber manufacturers, (exclusive of the hardwood flooring manufacturer) shall be apportioned as follows:

(1) Six members from District 1, which consists of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia and the District of Columbia;

(2) Four members from District 2, which consists of the States of Florida, Georgia, North Carolina, South Carolina, Virginia, the Commonwealth of Puerto Rico, and the U.S. territories;

(3) Five members from District 3, which consists of the States of Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas;

(4) Six members from District 4, which consists of the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin; and

(5) One member from District 5, which consists of the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(e) Once every five years, the Board will review data, including assessment records, government, industry statistics, and other reliable data, concerning the manufacturing of covered hardwood lumber. The Board shall:

(1) Review the geographical distribution of the volume of covered hardwood produced and sold within the United States by hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood manufacturers; and

(2) If warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the volume of covered hardwood produced and sold within the United States by hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood manufacturers. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

§ 1211.42 Nominations and appointments.

(a) Initial nominations will be submitted to the Secretary by the Blue Ribbon Committee (BRC). Before considering any nominations, the BRC shall publicize the nomination process, using trade press or other means it deems appropriate, and shall outreach to all manufacturers with annual sales of more than $2 million of covered hardwood lumber and with annual sales of more than $10 million of hardwood plywood per fiscal year in order to generate nominees that reflect the different operations within the hardwood lumber industry. The BRC may use regional caucuses, mail or other methods to elicit potential nominees. The BRC shall submit the nominations to the Secretary and recommend two nominees for each Board position specified. In addition, nominees for the initial Board may be submitted directly to the Secretary if accompanied by the signatures of at least 20 persons who pay assessments or will pay assessments under the Order. From the nominations submitted by the BRC or directly to the Secretary, the Secretary shall select the members of the Board.

(b) Subsequent nominations shall be conducted as follows:

(1) The Board shall outreach to all segments of the hardwood lumber industry. The Board may also solicit nominees using existing regional organizations. Initial and subsequent nominees must have annual sales of more than $2 million of covered hardwood lumber or have annual sales of more than $10 million of hardwood plywood per fiscal year;

(2) Manufacturer nominees may provide the Board a short background statement outlining their qualifications to serve on the Board;

(3) Manufacturers who manufacture covered hardwood lumber in more than one district may seek nomination only in the district in which they manufacture the majority of the volume of their covered hardwood lumber. The names of hardwood manufacturer nominees shall be placed on a ballot by district. The ballots along with the background statements shall be mailed to manufacturers in each respective district for a vote. Manufacturers who manufacture covered hardwood lumber in more than one district may only vote in the district in which they manufacture the majority of the volume of their covered hardwood lumber. The Board must submit nominations to the Secretary at least six months before the new Board term begins. Before considering any nominations, the Board shall publicize the nomination process, using trade press or other means it

deems appropriate, and shall outreach to all sizes of manufacturers of covered hardwood in order to generate nominees that reflect the different size of operations within the hardwood lumber industry. The Board may use district caucuses or other methods to elicit potential nominees. The votes shall be tabulated for each district with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary.

(4) No two members shall be employed by a single corporation, company, partnership, or any other legal entity; and

(5) The Board may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary.

§ 1211.43 Term of office.

(a) With the exception of the initial Board, each Board member will serve a three-year term or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and end on December 31, and no member may serve more than two consecutive terms, excluding any term of office less than three years.

(b) For the initial board, the terms of Board members shall be staggered for two, three, and four years so that the terms of approximately one-third of the board expire in any given year.

§ 1211.44 Removal and vacancies.

(a) In the event that any member of the Board ceases to own or work for a hardwood lumber or hardwood plywood manufacturer, or ceases to do business in the district he or she represents, such position shall become vacant.

(b) The Board may recommend to the Secretary that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Secretary shall remove the member if he or she finds that the Board's recommendation shows adequate cause. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part. If the Secretary determines that each member's continued service would be detrimental to the achievement of the purposes of the Act.

(c) If a position becomes vacant, nominations to serve the unexpired term will be handled using the nominations process set forth in this Order. If the unexpired term has less than six months remaining, the Secretary may leave the position vacant.

§ 1211.45 Procedure.

(a) At a Board meeting, a majority of the Board members duly appointed by the Secretary will constitute a quorum. A member attending the meeting by telephone or other electronic means shall be considered present for purposes of quorum.

(b) All votes at meetings of the Board and any committees will be cast in person or by electronic voting, including by telephone. Voting by proxy will not be allowed.

(c) Each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by more than 50 percent of the Board members present or participating by electronic means.

(d) The Board must give members and the Secretary timely notice of all Board and committee meetings.

(e) In lieu of voting at a properly convened meeting, and when, in the opinion of the Board's chairperson, such action is considered necessary, the Board may take action by mail, telephone, electronic mail, facsimile, or any other means of communication. Any action taken under this procedure is valid only if:

(1) All members and the Secretary are notified and the members are provided the opportunity to vote;

(2) A majority of the members vote in favor of the action; and

(3) All votes are promptly confirmed in writing and recorded in the Board minutes.

§ 1211.46 Reimbursement and attendance.

Board members will serve without compensation. Board members will be reimbursed for reasonable travel expenses, as approved by the Board, which they incur when performing Board business.

§ 1211.47 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To administer this Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws, rules, and regulations as may be necessary for the functioning of the Board and for administering the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among its members a chairperson and such other officers as the Board deems necessary;

(d) To create any committees, including an executive committee, or subcommittees, as the Board deems necessary from its membership. Subcommittees may include individuals other than Board members;

(e) To employ or contract persons, other than the Board members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons or to contract such services from an organization and to enter into contracts or agreements in order to carry out authorized functions;

(f) To provide appropriate notice of meetings to the industry and USDA and keep minutes of such meetings;

(g) To develop and administer programs, plans, and projects and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for promotion, research and information, including consumer and industry information, research and advertising designed to strengthen hardwood lumber industry's position in the marketplace and to maintain, develop, and expand markets for covered hardwood lumber. The payment of costs for such activities shall be with funds collected pursuant to the Order, including funds collected pursuant to § 1211.50(f). Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget that specifies the cost to be incurred to carry out the activity;

(2) The contractor or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(h) To prepare and submit to the Secretary for approval 60 calendar days in advance of the beginning of a fiscal period, rates of assessment and a budget of the anticipated expenses to be incurred in the administration of the Order, including the probable cost of each promotion, research and

information activity proposed to be developed or carried out by the Board;

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(j) To act as an intermediary between the Secretary and any manufacturer;

(k) To cause its books to be audited by a certified public accountant at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit to the Secretary;

(l) To recommend changes to the assessment rate as provided in this part;

(m) To borrow funds necessary for startup expenses of the Order;

(n) To receive, investigate, and report to the Secretary complaints of violations of the Order, including investigating complaints of violation, and ensuring consistent, uniform and appropriate application of this part;

(o) To consider and recommend to the Secretary new products and the application of the assessment to such products.

(p) To recommend to the Secretary such amendments to the Order as the Board considers appropriate;

(q) To periodically prepare and make public and to make available to manufacturers reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended;

(r) To invest assessments funds collected but not yet disbursed pursuant to this part. Investments shall be in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, obligations fully guaranteed as to principal and interest by the United States or any agency of the United States, or general obligations of any State or any political subdivision of a State.

(s) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood industry's position in the market; maintain and expand existing markets and uses for covered hardwood; and to carry out programs, plans, and projects designed to provide maximum benefits to the hardwood lumber, hardwood lumber products, hardwood lumber value-added products and hardwood plywood industries.

§ 1211.48 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that is a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to this part; and

(c) No program, plan, or project including advertising shall be false or misleading, or disparaging to another agricultural commodity.

Expenses and Assessments

§ 1211.50 Budget and expenses.

(a) At least 60 days before the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering the Order. Each such budget, which must be approved by the Secretary before it is implemented, shall include:

(1) A statement of objectives and strategy for each program, plan, or project developed and approved by the Boards;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Board may incur such expenses, including provision for a reserve, as are reasonable and likely to be incurred for maintenance and functioning of the Board, and to enable it to exercise its powers and perform its duties in accordance with the provisions of the Order. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation by the Board.

(f) The Board may accept voluntary contributions, and is encouraged to seek other appropriate funding sources to carry out activities authorized by the Order. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may receive funds from outside sources (i.e., Federal or State grants, Foreign Agricultural Service funds), with approval of the Secretary, for specific authorized projects.

(g) The Board shall reimburse the Secretary for all expenses the Secretary incurs in the implementation, administration, and supervision of this part, including all costs relating to the conducting of a referendum in connection with this part.

(h) For fiscal years beginning three years after the establishment of the Board, the Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Secretary required under this section are excluded from this limitation on spending.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided,* That, the funds in the reserve do not exceed one fiscal period's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this part in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial

institutions that are members of the Federal Reserve System;

(4) Obligations fully guaranteed as to principal interest by the United States; or

(5) Other investments as authorized by the Secretary.

§ 1211.51 Financial statements.

(a) Upon the Secretary's request, the Board shall prepare and submit financial statements to the Secretary on a monthly or quarterly basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Board shall submit to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

Assessments

§ 1211.52 Assessments.

(a) The Board's programs and expenses shall be paid by assessments on manufacturers of covered hardwood, other income of the Board, and other funds available to the Board. This section authorizes hardwood lumber manufacturers to be assessed on hardwood plywood and hardwood lumber, both in its green (raw) form and as it is kiln dried to create hardwood lumber products and hardwood lumber value-added products.

(b) Subject to the exemption specified in § 1211.53, each manufacturer shall pay the following assessment:

	Description	Assessment rate	Allowable deductions
Hardwood lumber	—hardwood logs turned into lumber (raw green lumber).	$1/$1,000 in sales	N/A.
Hardwood lumber product	—stays a board or block (a little more processed than green lumber).	$1/$1,000 in sales	—deduct the hardwood lumber purchase.
Hardwood lumber value-added products.	—flooring and molding (stays the shape of a board but has undergone additional processing—does NOT include multi-component or further manufactured products such as furniture, cabinets, cabinet doors, prefinished or engineered flooring, pallets, or dimension or glued components for cabinets or furniture.	$0.75/$1,000 in sales	—deduct the hardwood lumber purchase.
Hardwood plywood	—plywood	$3/$1,000 in sales	N/A.

(1) Hardwood lumber manufacturers that cut (raw) green hardwood logs into hardwood lumber or kiln dry hardwood lumber to create hardwood lumber that can be further processed into hardwood lumber products shall pay at the rate of $1.00 per $1,000.00 in sales of (raw) green hardwood lumber.

(2) Hardwood lumber manufacturers that manufacture hardwood lumber products shall pay at a rate of $1.00 per $1,000 in sales of hardwood lumber minus the dollar value of (raw) green lumber purchases.

(3) Hardwood lumber value-added product manufacturers shall pay a rate of $0.75 per $1,000.00 in sales of hardwood lumber value-added products: *Provided,* That, hardwood lumber value-added product manufacturers would deduct covered hardwood lumber purchases from their sales figures to take into account the assessment that was already paid on the (raw) green covered hardwood lumber.

(4) Hardwood plywood manufacturers shall pay at the rate of $3.00 per $1,000 in sales of hardwood plywood lumber.

(5) Brokered sales of hardwood lumber or hardwood lumber products are excluded from the calculation of assessments. For an integrated pallet manufacturer that manufactures hardwood lumber then transfers within the same company to manufacture constructed pallets or crane mats, the hardwood lumber manufacturer shall pay at this rate on fair market value of the hardwood pallet lumber, pallet cants, pallet stock or crane mat material produced and transferred within the same company. The assessment rate would be based on the amount of green, kiln dried and pallet sales that they cut and transferred or sold to themselves. The dollar sales of green or kiln dried lumber is subtracted from the above value. Also subtracted from that value are annual green hardwood purchases times $.001. This formula is necessary to take into account covered hardwood lumber that is cut and transferred within the same company and covered hardwood lumber purchases from other manufacturers used in the manufacturing of pallets. Brokered sales of covered hardwood are excluded from the calculation of assessments.

(c) Assessments shall be remitted to the Board on a quarterly basis, accompanied by a form that the Board shall develop, no later than thirtieth calendar day of the month following the end of the quarter in which the covered hardwood lumber was marketed. Any information collected pursuant to the collection of assessments, shall be kept confidential as specified in § 1211.72 so that no Board member or person subject to assessment shall have access to such information.

(d) The assessment rate specified in this section may be changed only upon a recommendation by the Board to the Secretary for implementation through rulemaking.

(e) If the assessment is not paid within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest shall be recommended by the Board to the Secretary through informal rulemaking. Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(f) The Board may accept advance payment of assessments that will be credited toward any amount for which that person may become liable. The Board may not pay interest on any advance payment.

(g) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is established.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1211.53 Exemption from assessment.

(a) Small hardwood lumber manufacturers and small hardwood plywood manufacturers shall be exempt from paying assessments as follows:

(1) Hardwood lumber manufacturers, hardwood lumber product manufacturers, and hardwood lumber value-added products manufacturers with sales of any assessed product combined to be less than $2 million are exempt from paying assessments.

(2) Hardwood plywood manufacturers with annual sales of less than $10 million are exempt from paying assessments.

(b) Hardwood lumber manufacturers and hardwood plywood manufacturers who meet the exemption threshold shall apply for an exemption, on a form provided by the Board. This is an annual exemption and manufacturers must reapply each year. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board will then issue, if deemed appropriate, a certificate of exemption to each manufacturer who is eligible to receive one. Each person shall retain a copy of the certificate of exemption. The Board may develop additional procedures to administer this exemption as appropriate. Such procedures shall be implemented through rulemaking by the Secretary.

(c) Hardwood lumber manufacturers who did not apply to the Board for an exemption and have annual sales of less than $2 million or hardwood plywood manufacturers that have annual sales of less than $10 million during the fiscal year shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. Board staff shall determine the assessments paid and refund the amount due to the manufacturer accordingly.

(d) Hardwood lumber manufacturers who received an exemption certificate from the Board but have annual sales of more than $2 million or hardwood plywood manufacturers that have annual sales of more than $10 million during the fiscal year shall pay the Board the applicable assessments owed on the annual sales of the covered hardwood within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board pursuant to § 1211.70.

(e) *Organic.*

(1) Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

(2) A hardwood lumber or hardwood plywood manufacturer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures and has annual sales of covered hardwood lumber that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation shall be exempt from payment of assessments. To obtain an organic exemption, an eligible manufacturer shall submit a request for exemption to the Board, on a form provided by the Board, at any time initially and annually thereafter on or before the start of the fiscal year as long as such manufacturer continues to be eligible for the exemption. The request shall include the following: The manufacturer's name and address; a copy of the organic operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary. The Board shall have 30 calendar days to approve the exemption request. If the exemption is not granted, the Board will notify the applicant and provide reasons for the denial within the same time frame.

(f) The Board may develop additional procedures to administer this exemption as appropriate. Such procedures shall be implemented through rulemaking by the Secretary.

Promotion, Research and Information

§ 1211.60 Programs, plans, and projects.

(a) The Board shall develop and submit to the Secretary for approval programs, plans, and projects authorized under this part. Such programs, plans, or projects shall provide for the establishment, issuance, implementation, and administration of appropriate programs for promotion, research and information with respect to covered hardwood.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once the Secretary approves a program, plan, or project, the Board shall take appropriate steps to implement it.

(c) The Board shall periodically review or evaluate each program, plan, or project implemented under this subpart to ensure that it contributes to an effective program of promotion, research or information. If the Board finds that any such program, plan, or project does not contribute to an effective program of promotion, research or information, then the Board shall terminate such program, plan, or project.

§ 1211.61 Independent evaluation.

Within four years of the first Board meeting and at least once every five years thereafter, the Board shall authorize and fund an independent evaluation of the effectiveness of the Order and programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary and make available to the public the results of each periodic independent evaluation conducted under this section.

§ 1211.62 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this part shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this part, § 1211.83 shall apply to determine disposition of all such property.

Reports, Books and Records

§ 1211.70 Reports.

(a) Each hardwood lumber manufacturer and hardwood lumber plywood manufacturer will be required to provide periodically to the Board staff such information as the Board, with the approval of the Secretary, may require. Such information may include, but not be limited to:

(1) The name, address and telephone number of the manufacturer;

(2) The annual sales of covered hardwood lumber; and

(3) The annual sales of covered hardwood lumber for which assessments were paid.

(b) Such information shall accompany the collected payment of assessments on a quarterly basis specified in § 1211.52.

§ 1211.71 Books and records.

Each manufacturer, including those exempt under § 1211.53, shall maintain any books and records necessary to carry out the provisions of this subpart and regulations issued thereunder, including such records as are necessary to verify any required reports. Such books and records must be made available during normal business hours

for inspection by the Board's or Secretary's employees or agents. A manufacturer must maintain the books and records for two years beyond the fiscal period to which they apply.

§ 1211.72 Confidentiality of information.

All information obtained from books, records, or reports under the Act, this subpart and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or other manufacturers. Only those persons having a specific need for such information solely to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

Miscellaneous

§ 1211.80 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1211.81 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a majority of the volume of covered hardwood lumber, represented in the referendums by those who, during a representative period determined by the Secretary, are engaged in the manufacture of covered hardwood lumber.

(b) *Subsequent referenda.* Five years after the initial meeting of the Board, the Secretary shall hold a referendum to determine whether hardwood lumber and hardwood plywood manufacturers favor the continuation of the Order. Thereafter, the Secretary shall conduct a referendum at least every seven years. The Order shall continue if it is favored by a majority of the volume of covered hardwood lumber, represented in the referendum by those who, during a representative period determined by the Secretary, are engaged in the manufacture of covered hardwood lumber. The Secretary will also conduct a referendum if requested by the Board or if 10 percent or more of all non-exempt hardwood lumber manufacturers, hardwood plywood manufacturers paying an assessment. In addition, the Secretary may hold a referendum at any time.

§ 1211.82 Suspension and termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof, if the Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is favored by a majority of the volume represented in the referendum by those who, during a representative period determined by the Secretary, have been engaged in the manufacturing of covered hardwood lumber.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than one hundred and eighty (180) calendar days after making the determination, suspend or terminate, as the case may be, the collection of assessments under this subpart.

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1211.83 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such persons' title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more hardwood lumber and hardwood plywood industry organizations in the interest of continuing hardwood lumber and hardwood plywood promotion, Research and information programs.

§ 1211.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination or amendment of this part or any subpart thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other persons with respect to any such violation.

§ 1211.85 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1211.86 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1211.87 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1211.88 OMB control number.

The control numbers assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, are OMB control number 0505–0001 (Board nominee background statement) and OMB control number 0581—NEW.

Subpart B—[Reserved]

Dated: November 6, 2013.

Rex A. Barnes,

Associate Administrator.

[FR Doc. 2013–27108 Filed 11–12–13; 8:45 am]

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FEDERAL REGISTER

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Part V

The President

Notice of November 12, 2013—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 78, No. 219
Wednesday, November 13, 2013

Presidential Documents

Title 3—

The President

Notice of November 12, 2013

Continuation of the National Emergency With Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran and, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), took related steps to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the agreements with Iran, dated January 19, 1981, is still under way, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2013. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran declared in Executive Order 12170.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
November 12, 2013.

[FR Doc. 2013–27376
Filed 11–12–13; 11:15 am]
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