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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

[FNS–2006–0037]

RIN 0584–AD77

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages

Correction

In rule document 2014–04105, appearing on pages 12273–12300 in the issue of Tuesday, March 4, 2014, make the following correction:

§ 246.10 [Corrected]

■ On pages 12295–12296, in § 246.10(e)(9), Table 3 is corrected to read as follows:

TABLE 3—MAXIMUM MONTHLY ALLOWANCES (MMA) OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN WITH QUALIFYING CONDITIONS IN FOOD PACKAGE III

Foods [1]	Children	Women		
	1 through 4 years	Pregnant and partially breastfeeding (up to 1 year postpartum) [2]	Postpartum (up to 6 months postpartum) [3]	Fully breastfeeding, (up to 1 year post-partum) [4 5]
Juice, single strength [6]	128 fl oz	144 fl oz	96 fl oz	144 fl oz.
WIC Formula [7 8]	455 fl oz liquid concentrate	455 fl oz liquid concentrate	455 fl oz liquid concentrate	455 fl oz liquid concentrate.
Milk	16 qt [9 10 11 12 13]	22 qt [9 10 11 12 14]	16 qt [9 10 11 12 14]	24 qt. [9 10 11 12 14]
Breakfast cereal [15 16]	36 oz	36 oz	36 oz	36 oz.
Cheese	N/A	N/A	N/A	1 lb.
Eggs	1 dozen	1 dozen	1 dozen	2 dozen.
Fruits and vegetables [17 18 19]	$8.00 in cash-value vouchers.	$10.00 in cash value vouchers.	$10.00 in cash-value vouchers.	$10.00 in cash-value vouchers.
Whole wheat or whole grain bread [20].	2 lb	1 lb	N/A	1 lb.
Fish (canned)	N/A	N/A	N/A	30 oz.
Legumes, dry [21]	1 lb	1 lb	1 lb	1 lb
and/or	Or	And	Or	And
Peanut butter	18 oz	18 oz	18 oz	18 oz.

Table 3 Footnotes: N/A = the supplemental food is not authorized in the corresponding food package.

[1] Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods. The competent professional authority (CPA), as established by State agency policy, is authorized to determine nutritional risk and prescribe supplemental foods per medical documentation.

[2] This food package is issued to two categories of WIC participants: Women participants with singleton pregnancies and breastfeeding women whose partially (mostly) breastfed infants receive formula from the WIC Program in amounts that do not exceed the maximum formula allowances as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

[3] This food package is issued to two categories of WIC participants: Non-breastfeeding postpartum women and breastfeeding postpartum women whose breastfed infants receive more than the maximum infant formula allowances as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

[4] This food package is issued to four categories of WIC participants: Fully breastfeeding women whose infants do not receive formula from the WIC Program; women pregnant with two or more fetuses; women partially (mostly) breastfeeding multiple infants from the same pregnancy, and pregnant women who are also partially (mostly) breastfeeding singleton infants.

[5] Women fully breastfeeding multiple infants from the same pregnancy are prescribed 1.5 times the maximum allowances.

[6] Combinations of single-strength and concentrated juices may be issued provided that the total volume does not exceed the maximum monthly allowance for single-strength juice.

[7] WIC formula means infant formula, exempt infant formula, or WIC-eligible nutritionals.

[8] Powder and ready-to-feed may be substituted at rates that provide comparable nutritive value.

[9] Whole milk is the standard milk for issuance to 1-year-old children (12 through 23 months). Fat-reduced milks may be issued to 1-year-old children as determined appropriate by the health care provider per medical documentation. Lowfat (1%) or nonfat milks are the standard milks for issuance for children ≥ 24 months of age and women. Whole milk or reduced fat (2%) milk may be substituted for lowfat (1%) or nonfat milk for children ≥ 24 months of age and women as determined appropriate by the health care provider per medical documentation.

[10] Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk or a 1:2 fluid ounce substitution ratio. Dry milk may be substituted at an equal reconstituted rate to fluid milk.

[11] For children and women, cheese may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk. For children and women in the pregnant, partially breastfeeding and postpartum food packages, no more than 1 pound of cheese may be substituted. For women in the fully breastfeeding food package, no more than 2 pounds of cheese may be substituted for milk. State agencies do not have the option to issue additional amounts of cheese beyond these maximums even with medical documentation. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for children and women in the pregnant, partially breastfeeding and postpartum food packages. No more than a total of 6 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in the fully breastfeeding food package.)

[12] For children24 months of and women, yogurt may be substituted for fluid milk at the rate of 1 quart of yogurt per 1 quart of milk; a maximum of 1 quart of milk can be substituted. Additional amounts of yogurt are not authorized. Whole yogurt is the standard yogurt for issuance to 1-year-old children (12 through 23 months). Lowfat or nonfat yogurt may be issued to 1-year-old children (12 months to 23 months) as determined appropriate by the health care provider per medical documentation. Lowfat or nonfat yogurts are the standard yogurt for issuance to children ≥ 24 months of age and women. Whole yogurt may be substituted for lowfat or nonfat yogurt for children ≥ 24 months of age and women as determined appropriate by the health care provider per medical documentation. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for children and women in the pregnant, partially breastfeeding and postpartum food packages. No more than a total of 6 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in the fully breastfeeding food package.)

[13] For children, soy-based beverage and tofu may be substituted for milk as determined appropriate by the health care provider per medical documentation. Soy-based beverage may be substituted for milk on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted for milk for children at the rate of 1 pound of tofu per 1 quart of milk. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for children.) Additional amounts of tofu may be substituted, up to the maximum allowance for fluid milk for children, as determined appropriate by the health care provider per medical documentation.

[14] For women, soy-based beverage may be substituted for milk on a quart for quart basis up to the total maximum monthly allowance of milk. Tofu may be substituted for milk at the rate of 1 pound of tofu per 1 quart of milk. (No more than a total of 4 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in the pregnant, partially breastfeeding and postpartum food packages. No more than a total of 6 quarts of milk may be substituted for a combination of cheese, yogurt or tofu for women in the fully breastfeeding food package.) Additional amounts of tofu may be substituted, up to the maximum allowances for fluid milk, as determined appropriate by the health care provider per medical documentation.

[15] 32 dry ounces of infant cereal may be substituted for 36 ounces of breakfast cereal as determined appropriate by the health care provider per medical documentation..

[16] At least one half of the total number of breakfast cereals on the State agency's authorized food list must have whole grain as the primary ingredient and meet labeling requirements for making a health claim as a "whole grain food with moderate fat content" as defined in Table 4 of paragraph (e)(12) of this section.

[17] Both fresh fruits and fresh vegetables must be authorized by State agencies. Processed fruits and vegetables, i.e., canned (shelf-stable), frozen, and/or dried fruits and vegetables may also be authorized to offer a wider variety and choice for participants. State agencies may choose to authorize one or more of the following processed fruits and vegetables: canned fruit, canned vegetables, frozen fruit, frozen vegetables, dried fruit, and/or dried vegetables. The cash-value voucher may be redeemed for any eligible fruit and vegetable (refer to Table 4 of paragraph (e)(12) of this section and its footnotes). Except as authorized in paragraph (b)(1)(i) of this section, State agencies may not selectively choose which fruits and vegetables are available to participants. For example, if a State agency chooses to offer dried fruits, it must authorize all WIC-eligible dried fruits.

[18] Children and women whose special dietary needs require the use of pureed foods may receive commercial jarred infant food fruits and vegetables in lieu of the cash-value voucher. Children may receive 128 oz of commercial jarred infant food fruits and vegetables and women may receive 160 oz of commercial jarred infant food fruits and vegetables in lieu of the cash-value voucher. Infant food fruits and vegetables may be substituted for the cash-value voucher as determined appropriate by the health care provider per medical documentation.

[19] The monthly value of the fruit/vegetable cash-value vouchers will be adjusted annually for inflation as described in § 246.16(j).

[20] Whole wheat and/or whole grain bread must be authorized. State agencies have the option to also authorize brown rice, bulgur, oatmeal, whole-grain barley, whole wheat macaroni products, or soft corn or whole wheat tortillas on an equal weight basis.

[21] Canned legumes may be substituted for dry legumes at the rate of 64 oz. (e.g., four 16-oz cans) of canned beans for 1 pound dry beans. In Food Packages V and VII, both beans and peanut butter must be provided. However, when individually tailoring Food Packages V or VII for nutritional reasons (e.g., food allergy, underweight, participant preference), State agencies have the option to authorize the following substitutions: 1 pound dry and 64 oz. canned beans/peas (and no peanut butter); or 2 pounds dry or 128 oz. canned beans/peas (and no peanut butter); or 36 oz. peanut butter (and no beans).

[FR Doc. C1–2014–04105 Filed 3–10–14; 8:45 am]
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FEDERAL RESERVE SYSTEM

12 CFR Parts 225 and 252

[Regulations Y and YY; Docket Nos. R–1463 and R–1464; RIN 7100 AE–01 and AE–02]

Application of the Revised Capital Framework to the Capital Plan and Stress Test Rules

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule to require a bank holding company with total consolidated assets of $50 billion or more to estimate its tier 1 common ratio using the exiting definition for purposes of the Board's capital plan and stress test rules; defer until October 1, 2015, the use of the Board's advanced approaches rule for purposes of the Board's capital planning and stress testing rules; maintain the one-year transition period in the current stress test cycle during which bank holding companies and most state member banks with more than $10 billion but less than $50 billion in total consolidated assets are not required to incorporate the Board's Basel III-based revised regulatory capital framework that the Board approved on July 2, 2013 (revised capital framework); and make minor, conforming changes to the Board's capital plan rule and stress test rules. The final rule maintains all the changes to the Board's capital plan rule and stress test rules that were required under two interim final rules that the Board issued in September 2013, except that under the final rule, no banking organization is required to use the advanced approaches rule for purposes of the capital planning and stress testing rules until 2015.

DATES: The final rule is effective April 15, 2014.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Revised Capital Framework

On July 2, 2013, the Board approved the revised capital framework, which implemented the Basel III regulatory capital reforms and certain changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[1] The revised capital framework introduces a new common equity tier 1 capital ratio and supplementary leverage ratio, raises the minimum tier 1 ratio and, for certain banking organizations, leverage ratio, implements strict eligibility criteria for regulatory capital instruments, and introduces a standardized methodology for calculating risk-weighted assets. The new minimum regulatory capital ratios and the eligibility criteria for regulatory capital instruments began to take effect as of January 1, 2014, subject to transition provisions, for banking organizations that meet the criteria for the advanced approaches rule (advanced approaches banking organizations).[2] All other banking organizations must begin to comply with the revised capital framework beginning on January 1, 2015.

As the revised regulatory capital framework comes into effect and as explained more fully below, banking organizations will be required to reflect the requirements of the revised capital framework in their capital plans submitted pursuant to the Board's capital plan rule and in their stress tests conducted under the Board's rules implementing the stress test requirements of the Dodd-Frank Act.

B. Capital Plan Rule

Pursuant to the Board's capital plan rule and its related supervisory process, the Comprehensive Capital Analysis and Review (CCAR), the Board assesses the internal capital planning process of a bank holding company with total consolidated assets of $50 billion or more (large bank holding company) and its ability to maintain sufficient capital to continue its operations under expected and stressful conditions.[3] Under the capital plan rule, a large bank holding company is required to submit an annual capital plan to the Board that contains estimates of its minimum regulatory capital ratios and its tier 1 common ratio under expected conditions and a range of stressed scenarios over a nine-quarter planning horizon (planning horizon).[4] A capital plan also must include a discussion of how a large bank holding company will maintain a pro forma tier 1 common ratio above 5 percent under expected conditions and stressed scenarios.[5]

The preamble to the capital plan rule noted that the Basel III framework proposed by the Basel Committee on Bank Supervision includes a different definition of tier 1 common capital and that the Board and the other federal banking agencies continued to work to implement Basel III in the United States.[6] The capital plan rule's definition of "tier 1 common ratio" states that the definition will remain in effect until the Board adopts an alternative tier 1 common ratio definition as a minimum regulatory capital ratio.[7]

C. Stress Test Rules

The Board's stress test rules for large bank holding companies and nonbank financial companies supervised by the Board (together, covered companies) establish a framework for the Board to conduct annual supervisory stress tests to evaluate whether these companies have the capital necessary to absorb losses as a result of adverse economic conditions and require that these companies conduct semi-annual company-run stress tests.[8] For the supervisory stress tests, the Board uses data as of September 30 of each year to assess a covered company's capital levels, regulatory capital ratios, and tier 1 common ratio over the nine-quarter planning horizon of a given stress test cycle.[9] Similarly, the semi-annual stress tests conducted by a covered company require it to report, among other elements, its regulatory capital ratios and tier 1 common ratio for each quarter of a nine-quarter planning horizon.[10] The stress test rule for covered companies defines the tier 1 common ratio by cross-reference to the capital plan rule, which, as previously described, provides that the tier 1 common ratio is to remain in effect until the Board adopts an alternative tier 1 common ratio definition.[11]

D. Interim final rules

On September 30, 2013, the Board published in the **Federal Register** two interim final rules that amended the Board's capital plan rule and stress test rules.[12] The first interim final rule (capital planning and stress testing IFR) amended the Board's capital plan rule [13] and stress test rules [14] to require a bank holding company with total consolidated assets of $50 billion or more to estimate its tier 1 common ratio using the methodology in the Board's Basel I-based capital rules (under 12 CFR part 225, Appendix A).[15] This interim final rule also clarified when a banking organization would estimate its minimum regulatory capital ratios using the advanced approaches rule for a given capital plan and stress test cycle and made minor, technical changes to the capital plan rule.[16] Under the interim final rule, a banking organization is required to use the advanced approaches rule in its stress testing and capital planning only if the Board notifies the banking organization on or before September 30 that it has been approved to exit from parallel run under the advanced approaches rule. A satisfactory "parallel run" under the

[1] *See* 12 CFR part 217.

[2] A banking organization is subject to the advanced approaches rule if it has consolidated assets of at least $250 billion, if it has total consolidated on-balance sheet foreign exposures of at least $10 billion, or if it elects to apply the advanced approaches rule.

[3] *See generally* 12 CFR 225.8.

[4] *Id.*

[5] *Id.* at § 225.8(d)(2)(i)(B).

[6] 76 FR 74631, 74637 (December 1, 2011).

[7] *Id.* at § 225.8(c)(9).

[8] The changes in this final rule would apply to nonbank financial companies supervised by the Board once they become subject to stress test requirements.

[9] 12 CFR 252.44(a).

[10] *Id.* at 252.56(a).

[11] *Id.* at 252.42(r), 252.52(t).

[12] 78 FR 59779 (September 30, 2013); 78 FR 59791 (September 30, 2013).

[13] 76 FR 74631 (Dec. 1, 2011) (codified at 12 CFR 225.8).

[14] 77 FR 62378 (Oct. 12, 2012) (codified at 12 CFR part 252, subparts F and G).

[15] *See* 12 CFR 225.8 (capital plan rule); 12 CFR part 252, subpart F (Supervisory Stress Test Requirements for Covered Companies); 12 CFR part 252, subpart G (Company-Run Stress Test Requirements for Covered Companies).

[16] As of January 1, 2014, the advanced approaches rule is found at 12 CFR part 217, subpart E. Until December 31, 2013, the advanced approaches rule was found at 12 CFR part 208, Appendix F (state member banks) and 12 CFR part 225, Appendix G (bank holding companies).

advanced approaches rule is a period of no less than four consecutive calendar quarters during which the banking organization complies with the qualification requirements of the rule.[17]

The second interim final rule (IFR for $10–$50 billion companies) provided a one-year transition period during which bank holding companies and most state member banks with more than $10 billion but less than $50 billion in total consolidated assets are not required to reflect the Board's revised capital framework in their stress tests for the stress test cycle that began on October 1, 2013. Instead, for this stress test cycle, these companies are required to estimate their pro forma capital levels and ratios over the full nine-quarter planning horizon using the Board's Basel I-based capital rules.[18] Like the capital planning and stress testing IFR, the IFR for $10–$50 billion companies also clarified that a banking organization is required to use the advanced approaches rule in its company-run stress testing only if the Board notifies the banking organization on or before September 30 that it has been approved to exit from parallel run under the advanced approaches rule.

In this final rule, the Board is adopting both the capital planning and stress testing IFR and the IFR for $10–$50 billion companies in final form. The final rule is identical to the interim final rules except that the final rule provides an additional year, until October 1, 2015, for companies that have exited from parallel run to incorporate the advanced approaches rule into their capital planning and company-run stress tests, and for the Board to incorporate the advanced approaches rule in its supervisory stress tests.

II. Comments on the Interim Final Rules

The Board received two comments on the capital planning and stress testing IFR. The comments were both from individuals and encouraged the Board to implement the Dodd-Frank Act in a stringent manner. Neither commenter provided any specific comments regarding the capital planning and stress testing IFR.

The Board did not receive any comments on the IFR for $10–$50 billion companies.

III. Summary of the Final Rule

A. Incorporating the Revised Capital Framework Into the Capital Plan and Stress Tests Rules

The capital planning and stress testing IFR clarified that large bank holding companies should continue to calculate their tier 1 common ratio using the methodology in the Board's Basel I-based capital rules. The final rule maintains this requirement.

Under the final rule, a large bank holding company must project its regulatory capital ratios and meet the minimum capital requirements for each quarter of the planning horizon *in accordance with the minimum capital requirements that are in effect for that company during that quarter.* Accordingly, under the final rule, in the capital planning and stress test cycle that begins on October 1, 2014, a large bank holding company that is an advanced approaches banking organization is required to calculate its common equity tier 1 capital ratio using the revised capital framework in every quarter of the nine-quarter planning horizon, meet a 4.0 percent minimum in common equity tier 1 capital ratio in 2014, and a 4.5 percent minimum common equity tier 1 capital ratio in 2015 and 2016. A large bank holding company that is not an advanced approaches banking organization is required to calculate its common equity tier 1 capital ratio in the capital planning and stress test cycle that begins on October 1, 2014, using the Basel I-based capital rules in the first quarter of the planning horizon and the revised capital framework in the second through ninth quarters of the planning horizon, and meet a 4.5 percent minimum common equity tier 1 capital ratio in 2015 and 2016. A state member bank that is a subsidiary of a bank holding company with total consolidated assets of $50 billion or more will reflect the revised capital framework in the same manner as its bank holding company parent in projecting its capital for the upcoming stress test cycle. Table 1 summarizes these requirements.

TABLE 1—COMMON EQUITY RATIOS APPLICABLE TO LARGE BANK HOLDING COMPANIES IN THE CAPITAL PLAN AND STRESS TEST CYCLES THAT BEGINS OCTOBER 1, 2014

	Q4 2014	Q1 2015	Q2 2015	Q3 2015	Q4 2015	Q1 2016	Q2 2016	Q3 2016	Q4 2016
Advanced approaches bank holding companies.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%
	CET1 ratio of 4.0%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%
Non-advanced approaches bank holding companies.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%.	Current T1C ratio of 5.0%
		CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%.	CET1 ratio of 4.5%

Current T1C ratio: the ratio of a bank holding company's tier 1 common capital calculated using the definitions under the Board's Basel I-based capital rules (*i.e.*, tier 1 capital as defined under Appendix A of 12 CFR part 225, less the non-common elements of tier 1 capital, over total risk-weighted assets as

[17] 12 CFR 217.121(c).

[18] These capital rules are found at 12 CFR parts 208 and 225, Appendix A.

defined under Appendices A and E of 12 CFR part 225).

CET1 ratio: a bank holding company's common equity tier 1 capital ratio as calculated under 12 CFR part 217, including the transition provisions of 12 CFR part § 217.300, as applicable within each quarter of the capital plan and stress test cycles that begin October 1, 2014.

Under the final rule, as under the capital planning and stress testing IFR, both large bank holding companies that are subject to the advanced approaches rule and large bank holding companies that are not subject to the advanced approaches rule must meet a minimum 5.0 percent tier 1 common ratio over every quarter of the planning horizon, calculate the tier 1 common ratio using the definitions of tier 1 capital and total risk-weighted assets under the Board's Basel I-based capital rules, and not incorporate the new definitions in the revised capital framework as part of this calculation. This approach maintains consistency with previous capital plan cycles during the multi-year phase-in of the new common equity tier 1 capital minimum requirement. Once the new minimum common equity tier 1 capital ratio reaches its permanent level of 4.5 percent and the deductions from common equity tier 1 capital are fully phased-in, the Board expects that the common equity tier 1 ratio will be generally more stringent than the tier 1 common ratio of 5.0 percent for the largest bank holding companies.

B. Transition Period for Revised Capital Framework

Under the IFR for $10–$50 billion companies, the Board provided bank holding companies and state member banks with total consolidated assets of more than $10 but less than $50 billion (other than state member banks that are subsidiaries of bank holding companies with total consolidated assets of $50 billion or more) with a one-year transition period to incorporate the revised capital framework into their company-run stress tests. During this transition period, these companies are not required to reflect the revised capital framework in any quarter of the nine-quarter planning horizon. The final rule maintains this transition period with respect to the current stress test cycle that began on October 1, 2013.

These companies will estimate their pro forma capital levels and ratios over the planning horizon using the capital rules under 12 CFR part 208, Appendix A (for state member banks) and 12 CFR part 225, Appendix A (for bank holding companies) and will not reflect the impact of the revised capital framework (12 CFR part 217) in their company-run stress tests. In particular, for this stress test cycle, these companies will not calculate common equity tier 1 capital as defined in the revised capital framework or incorporate the effects of any changes to the definition of capital or any changes to the calculation of risk-weighted assets. Beginning with the stress test cycle that starts on October 1, 2014, these companies will be required to reflect the revised capital framework in their company-run stress tests, including the common equity tier 1 capital requirement. Accordingly, for purposes of the stress test cycle that begins on October 1, 2014, each of these companies that is subject to the advanced approaches will be required to calculate its capital requirements, including the common equity tier 1 capital ratio, using the revised capital framework in every quarter of the nine-quarter planning horizon, and each of these companies that is not subject to the advanced approaches will be required to calculate its capital requirements using the Basel I-based capital rules in the first quarter of the planning horizon and the revised capital framework, including the common equity tier 1 capital ratio, in the second through ninth quarters of the planning horizon.

The final rule, like the IFR for $10–$50 billion companies, excludes from the one-year transition period state member banks that are subsidiaries of bank holding companies with total consolidated assets of $50 billion or more. Consistent with the stress test rules applicable to their bank holding company parents, these state member banks must project their regulatory capital ratios for each quarter of the planning horizon *in accordance with the minimum capital requirements that will be in effect during that quarter.*

The Office of the Comptroller of the Currency and Federal Deposit Insurance Company both implemented the Dodd-Frank Act stress testing requirements for the stress test cycle that began on October 1, 2013, in a similar manner for banks and savings associations under their supervision with between $10 and $50 billion in total consolidated assets.

C. Parallel Run

In light of the issuance of the revised capital framework, both interim final rules were intended to provide clarity on when a banking organization would be required to estimate its minimum regulatory capital ratios over the planning horizon using the advanced approaches for a given capital planning and stress testing cycle. Without regard to the capital planning and stress test rules, an advanced approaches banking organization is required to use the advanced approaches to calculate its minimum regulatory capital ratios if it has conducted a satisfactory parallel run.[19] The interim final rules provided that for purposes of capital planning and stress testing, a banking organization must be notified that it has completed a successful parallel run by September 30 of a given calendar year in order to be required to estimate its capital ratios using the advanced approaches for the capital plan or stress test cycle that begins on October 1 of that calendar year. The final rule maintains this approach. Thus, the final rule provides that a company must be notified that it has completed its parallel run by September 30 of a given year in order to be required to estimate its capital ratios using the advanced approaches for the capital plan or stress test cycle that begins on October 1 of that year.

On February 14, 2014, the Board announced that certain advanced approaches banking organizations had completed a successful parallel run.[20] Beginning April 15, 2014, these companies will be required to use the advanced approaches rule to calculate their risk-based capital requirements consistent with the requirements of the advanced approaches rule. However, these companies will not be required to calculate capital according to the advanced approaches rule for purposes of capital planning and stress testing rules until the October 1, 2015, cycle.

As described above, the revised capital framework introduces more stringent capital requirements, including the 4.5 percent minimum common equity tier 1 capital ratio and the increasing deductions that will become effective on January 1, 2015. For the largest bank holding companies, this common equity tier 1 capital requirement, when fully phased in, is generally expected to result in a more stringent capital requirement than the capital plan rule's 5.0 percent tier 1 common ratio, in part because it incorporates significantly higher deductions from capital. The minimum capital requirements will continue to increase in stringency until the capital deductions are fully phased in in 2018. Large bank holding companies began to reflect these more stringent capital requirements in the current capital planning and stress test cycle, and all banking organizations subject to capital planning and stress testing will be

[19] 12 CFR 217.121(d).

[20] *See* Board press release dated February 20, 2014.

required to reflect the more stringent capital requirements in the next capital planning and stress test cycle.

Given the operational complexity associated with incorporating the advanced approaches rule in the capital planning and stress testing processes, the final rule clarifies that the advanced approaches rule's incorporation into the capital plan and stress testing rules will be deferred for one year, until October 1, 2015, with respect to any banking organization that is notified on or before September 30, 2014, that the banking organization may exit from parallel run. The transition period will provide the Federal Reserve with sufficient time to integrate the advanced approaches into its stress testing processes and to provide guidance to advanced approaches banking organizations regarding supervisory expectations for integrating the advanced approaches into their stress testing and capital planning processes.

D. Technical Changes

The interim final rule made minor technical changes to the capital plan rule. It clarified that a covered company that has not filed the FR Y–9C report for the four most recent consecutive quarters will calculate its total consolidated assets as reported on the company's available FR Y–9C reports for the most recent quarter or consecutive quarters. It also clarified that the Board (or the Reserve Bank, with concurrence of the Board) may extend the resubmission period for a capital plan beyond an initial 60-day extension if the Board or Reserve Bank determines that such longer period is appropriate.

The interim final rule modified the capital plan rule to reflect the Board's current practice of publicly disclosing its decision to object or not object to a bank holding company's capital plan along with a summary of the Board's analyses of that company. The rule provides that any disclosure will occur by March 31 of each calendar year, unless the Board determines that another date is appropriate. With regard to the Board's review of bank holding companies' capital plans, the Board expects the summary results largely will be similar to the results disclosed in previous CCAR exercises, unless the Board determines that different or additional disclosures would be appropriate.

The final rule maintains these minor and technical modifications without change. The final rule also deletes references to 12 CFR part 225, Appendix G, from the capital plan rule and stress test rules, because this appendix was removed from the Code of Federal Regulations effective January 1, 2014.

IV. Regulatory Analysis

A. Regulatory Flexibility Act Analysis

The Board has considered the potential impact of the final rule on small companies in accordance with the Regulatory Flexibility Act (5 U.S.C. 603(b)). Based on its analysis and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a final regulatory flexibility analysis.

Under regulations issued by the Small Business Administration ("SBA"), a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $500 million or less (a small banking organization). The final rule would apply to bank holding companies, savings and loan holding companies, and state member banks with total consolidated asset of $10 billion or more and nonbank financial companies supervised by the Board. Companies that would be subject to the interim finale rule therefore substantially exceed the $500 million total asset threshold at which a company is considered a small company under SBA regulations.

The Board did not receive any comments on the interim final rules regarding their impact on small entities. In light of the foregoing, the Board does not believe that the final rule would have a significant economic impact on a substantial number of small entities.

B. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act required the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invited comment on how to make the interim final rules easier to understand. The Board did not receive any comments on plain language and believes that the final rule is clearly written.

C. Paperwork Reduction Act

This final rule references currently approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) provided for in the capital plan rules. This final rule does not introduce any new collections of information nor does it substantively modify the collections of information that Office of Management and Budget (OMB) has approved. Therefore, no Paperwork Reduction Act submissions to OMB are required.

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Capital planning, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Capital planning, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 2 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

■ 2. Revise § 225.8 to read as follows:

§ 225.8 Capital planning.

(a) *Purpose.* This section establishes capital planning and prior notice and approval requirements for capital distributions by certain bank holding companies.

(b) *Scope and effective date.* (1) This section applies to every top-tier bank holding company domiciled in the United States:

(i) With average total consolidated assets of $50 billion or more. Average total consolidated assets means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C

used in the calculation of the average; or

(ii) That is subject to this section, in whole or in part, by order of the Board based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

(2) Beginning on December 23, 2011, the provisions of this section shall apply to any bank holding company that is subject to this section pursuant to paragraph (b)(1), provided that:

(i) Until July 21, 2015, this section will not apply to any bank holding company subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010); and

(ii) A bank holding company that becomes subject to this section pursuant to paragraph (b)(1)(i) after the 5th of January of a calendar year shall not be subject to the requirements of paragraphs (d)(1)(ii), (d)(4), and (f)(1)(iii) of this section until January 1 of the next calendar year.

(3) Notwithstanding any other requirement in this section, for a given capital plan cycle:

(i) Until October 1, 2015, a bank holding company's estimates of its pro forma regulatory capital ratios and its pro forma tier 1 common ratio over the planning horizon shall not include estimates using the advanced approaches; and

(ii) Beginning October 1, 2015, for a given capital plan cycle (including for purposes of the January 5 submission of a capital plan under paragraph (d)(1) of this section and any resubmission of the capital plan under paragraph (d)(4) of this section during the capital plan cycle), a bank holding company's estimates of its pro forma regulatory capital ratios and its pro forma tier 1 common ratio over the planning horizon shall not include estimates using the advanced approaches if the bank holding company is notified on or after the first day of that capital plan cycle (October 1) that the bank holding company is required to calculate its risk-based capital requirements using the advanced approaches.

(4) Nothing in this section shall limit the authority of the Federal Reserve to issue a capital directive or take any other supervisory or enforcement action, including action to address unsafe or unsound practices or conditions or violations of law.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(2) *Capital action* means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a bank holding company's consolidated capital.

(3) *Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Federal Reserve determines to be in substance a distribution of capital.

(4) *Capital plan* means a written presentation of a bank holding company's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (d)(2) of this section.

(5) *Capital plan cycle* means the period beginning on October 1 of a calendar year and ending on September 30 of the following calendar year.

(6) *Capital policy* means a bank holding company's written assessment of the principles and guidelines used for capital planning, capital issuance, usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for dividend and stock repurchases; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

(7) *Minimum regulatory capital ratio* means any minimum regulatory capital ratio that the Federal Reserve may require of a bank holding company, by regulation or order, including, as applicable, the bank holding company's tier 1 and supplementary leverage ratios and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under appendices A, D, and E to this part (12 CFR part 225) and 12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR 217.300, or any successor regulation.

(8) *Planning horizon* means the period of at least nine quarters, beginning with the quarter preceding the quarter in which the bank holding company submits its capital plan, over which the relevant projections extend.

(9) *Tier 1 capital* has the same meaning as under appendix A to this part or under 12 CFR part 217, as applicable, or any successor regulation.

(10) *Tier 1 common capital* means tier 1 capital as defined under appendix A to this part less the non-common elements of tier 1 capital, including perpetual preferred stock and related surplus, minority interest in subsidiaries, trust preferred securities and mandatory convertible preferred securities.

(11) *Tier 1 common ratio* means the ratio of a bank holding company's tier 1 common capital to total risk-weighted assets as defined under appendices A and E to this part.

(d) *General requirements.* (1) *Annual capital planning.* (i) A bank holding company must develop and maintain a capital plan.

(ii) A bank holding company must submit its complete capital plan to the appropriate Reserve Bank and the Board each year by the 5th of January, or such later date as directed by the Board or the appropriate Reserve Bank, with concurrence of the Board.

(iii) The bank holding company's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (d)(1)(ii) of this section:

(A) Review the robustness of the bank holding company's process for assessing capital adequacy,

(B) Ensure that any deficiencies in the bank holding company's process for assessing capital adequacy are appropriately remedied; and

(C) Approve the bank holding company's capital plan.

(2) *Mandatory elements of capital plan.* A capital plan must contain at least the following elements:

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the bank holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Estimates of projected revenues, losses, reserves, and pro forma capital levels, including any minimum regulatory capital ratios (for example, leverage, tier 1 risk-based, and total risk-based capital ratios) and any additional capital measures deemed relevant by the bank holding company, over the planning horizon under expected conditions and under a range of stressed scenarios, including any scenarios provided by the Federal Reserve and at least one stressed scenario developed by the bank holding company appropriate to its business model and portfolios;

(B) A calculation of the pro forma tier 1 common ratio over the planning horizon under expected conditions and under a range of stressed scenarios and discussion of how the company will maintain a pro forma tier 1 common

ratio above 5 percent under expected conditions and the stressed scenarios required under paragraphs (d)(2)(i)(A) and (ii) of this section;

(C) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(D) A description of all planned capital actions over the planning horizon.

(ii) A detailed description of the bank holding company's process for assessing capital adequacy, including:

(A) A discussion of how the bank holding company will, under expected and stressful conditions, maintain capital commensurate with its risks, maintain capital above the minimum regulatory capital ratios and above a tier 1 common ratio of 5 percent, and serve as a source of strength to its subsidiary depository institutions;

(B) A discussion of how the bank holding company will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) The bank holding company's capital policy; and

(iv) A discussion of any expected changes to the bank holding company's business plan that are likely to have a material impact on the firm's capital adequacy or liquidity.

(3) *Data collection.* Upon the request of the Board or appropriate Reserve Bank, the bank holding company shall provide the Federal Reserve with information regarding:

(i) The bank holding company's financial condition, including its capital;

(ii) The bank holding company's structure;

(iii) Amount and risk characteristics of the bank holding company's on- and off-balance sheet exposures, including exposures within the bank holding company's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions to changes in market rates and prices;

(iv) The bank holding company's relevant policies and procedures, including risk management policies and procedures;

(v) The bank holding company's liquidity profile and management; and

(vi) Any other relevant qualitative or quantitative information requested by the Board or the appropriate Reserve Bank to facilitate review of the bank holding company's capital plan under this section.

(4) *Re-submission of a capital plan.* (i) A bank holding company must update and re-submit its capital plan to the appropriate Reserve Bank within 30 calendar days of the occurrence of one of the following events:

(A) The bank holding company determines there has been or will be a material change in the bank holding company's risk profile, financial condition, or corporate structure since the bank holding company adopted the capital plan;

(B) The Board or the appropriate Reserve Bank objects to the capital plan; or

(C) The Board or the appropriate Reserve Bank, with concurrence of the Board, directs the bank holding company in writing to revise and resubmit its capital plan for any of the following reasons:

(*1*) The capital plan is incomplete or the capital plan, or the bank holding company's internal capital adequacy process, contains material weaknesses;

(*2*) There has been or will likely be a material change in the bank holding company's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(*3*) The stressed scenario(s) developed by the bank holding company is not appropriate to its business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on a bank holding company's risk profile and financial condition require the use of updated scenarios; or

(*4*) The capital plan or the condition of the bank holding company raise any of the issues described in paragraph (e)(2)(ii) of this section.

(ii) The Board or the appropriate Reserve Bank, with concurrence of the Board, may, at its discretion, extend the 30-day period in paragraph (d)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as the Board or the appropriate Reserve Bank, with concurrence of the Board, determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, a bank holding company may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(e) *Review of capital plans by the Federal Reserve; publication of summary results.* (1) *Considerations and inputs.* (i) The Board or the appropriate Reserve Bank, with concurrence of the Board, will consider the following factors in reviewing a bank holding company's capital plan:

(A) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming from activities across the firm and the company's capital policy;

(B) The reasonableness of the bank holding company's assumptions and analysis underlying the capital plan and its methodologies for reviewing the robustness of its capital adequacy process; and

(C) The bank holding company's ability to maintain capital above each minimum regulatory capital ratio and above a tier 1 common ratio of 5 percent on a pro forma basis under expected and stressful conditions throughout the planning horizon, including but not limited to any stressed scenarios required under paragraph (d)(2)(i)(A) and (ii) of this section.

(ii) The Board or the appropriate Reserve Bank, with concurrence of the Board, will also consider the following information in reviewing a bank holding company's capital plan:

(A) Relevant supervisory information about the bank holding company and its subsidiaries;

(B) The bank holding company's regulatory and financial reports, as well as supporting data that would allow for an analysis of the bank holding company's loss, revenue, and reserve projections;

(C) As applicable, the Federal Reserve's own pro forma estimates of the firm's potential losses, revenues, reserves, and resulting capital adequacy under expected and stressful conditions, including but not limited to any stressed scenarios required under paragraph (d)(2)(i)(A) and (ii) of this section, as well as the results of any stress tests conducted by the bank holding company or the Federal Reserve; and

(D) Other information requested or required by the appropriate Reserve Bank or the Board, as well as any other information relevant, or related, to the bank holding company's capital adequacy.

(2) *Federal Reserve action on a capital plan.* (i) The Board or the appropriate Reserve Bank, with concurrence of the Board, will object, in whole or in part, to the capital plan or provide the bank holding company with a notice of non-objection to the capital plan:

(A) By March 31 of the calendar year in which a capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section, and

(B) By the date that is 75 calendar days after the date on which a capital plan was resubmitted pursuant to paragraph (d)(4) of this section.

(ii) The Board or the appropriate Reserve Bank, with concurrence of the Board, may object to a capital plan if it determines that:

(A) The bank holding company has material unresolved supervisory issues, including but not limited to issues associated with its capital adequacy process;

(B) The assumptions and analysis underlying the bank holding company's capital plan, or the bank holding company's methodologies for reviewing the robustness of its capital adequacy process, are not reasonable or appropriate;

(C) The bank holding company has not demonstrated an ability to maintain capital above each minimum regulatory capital ratio and above a tier 1 common ratio of 5 percent, on a pro forma basis under expected and stressful conditions throughout the planning horizon; or

(D) The bank holding company's capital planning process or proposed capital distributions otherwise constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board. In determining whether a capital plan or any proposed capital distribution would constitute an unsafe or unsound practice, the appropriate Reserve Bank would consider whether the bank holding company is and would remain in sound financial condition after giving effect to the capital plan and all proposed capital distributions.

(iii) The Board or the appropriate Reserve Bank, with concurrence of the Board, will notify the bank holding company in writing of the reasons for a decision to object to a capital plan.

(iv) If the Board or the appropriate Reserve Bank, with concurrence of the Board, objects to a capital plan and until such time as the Board or the appropriate Reserve Bank, with concurrence of the Board, issues a non-objection to the bank holding company's capital plan, the bank holding company may not make any capital distribution, other than those capital distributions with respect to which the Board or the appropriate Reserve Bank has indicated in writing its non-objection.

(v) The Board may disclose publicly its decision to object or not object to a bank holding company's capital plan under this section, along with a summary of the Board's analyses of that company. Any disclosure under this paragraph (e)(2)(v) will occur by March 31, unless the Board determines that a later disclosure date is appropriate.

(3) *Request for reconsideration or hearing.* Within 10 calendar days of receipt of a notice of objection to a capital plan by the Board or the appropriate Reserve Bank:

(i) A bank holding company may submit a written request to the Board requesting reconsideration of the objection, including an explanation of why reconsideration should be granted. Within 10 calendar days of receipt of the bank holding company's request, the Board will notify the company of its decision to affirm or withdraw the objection to the bank holding company's capital plan or a specific capital distribution; or

(ii) As an alternative to paragraph (e)(3)(i) of this section, a bank holding company may submit a written request to the Board for a hearing. Any hearing shall follow the procedures described in paragraph (f)(5)(ii) through (iii) of this section.

(f) *Approval requirements for certain capital actions.* (1) *Circumstances requiring approval.* Notwithstanding a notice of non-objection under paragraph (e)(2)(i) of this section a bank holding company may not make a capital distribution under the following circumstances, unless it receives approval from the Board or appropriate Reserve Bank pursuant to paragraph (f)(4) of this section:

(i) After giving effect to the capital distribution, the bank holding company would not meet a minimum regulatory capital ratio or a tier 1 common ratio of at least 5 percent;

(ii) The Board or the appropriate Reserve Bank, with concurrence of the Board, notifies the company in writing that the Federal Reserve has determined that the capital distribution would result in a material adverse change to the organization's capital or liquidity structure or that the company's earnings were materially underperforming projections;

(iii) Except as provided in paragraph (f)(2) of this section, the dollar amount of the capital distribution will exceed the amount described in the capital plan for which a non-objection was issued under this section; or

(iv) The capital distribution would occur after the occurrence of an event requiring resubmission under paragraphs (d)(4)(i)(A) and (d)(4)(i)(C) of this section and before the Federal Reserve acted on the resubmitted capital plan.

(2) *Exception for well capitalized bank holding companies.* (i) A bank holding company may make a capital distribution for which the dollar amount exceeds the amount described in the capital plan for which a non-objection was issued under this section if the following conditions are satisfied:

(A) The bank holding company is, and after the capital distribution would remain, well capitalized as defined in § 225.2(r) of Regulation Y (12 CFR 225.2(r));

(B) The bank holding company's performance and capital levels are, and after the capital distribution would remain, consistent with its projections under expected conditions as set forth in its capital plan under this paragraph (d)(2)(i);

(C) The annual aggregate dollar amount of all capital distributions (beginning on April 1 of a calendar year and ending on March 31 of the following calendar year) would not exceed the total amounts described in the company's capital plan for which the bank holding company received a notice of non-objection by more than 1.00 percent multiplied by the bank holding company's tier 1 capital, as reported to the Federal Reserve on the bank holding company's first quarter FR Y–9C;

(D) The bank holding company provides the appropriate Reserve Bank with notice 15 calendar days prior to a capital distribution that includes the elements described in paragraph (f)(3) of this section; and

(E) The Board or the appropriate Reserve Bank, with concurrence of the Board, does not object to the transaction proposed in the notice. In determining whether to object to the proposed transaction, the Board or the appropriate Reserve Bank, with concurrence of the Board, shall apply the criteria described in paragraph (f)(4)(iv) of this section.

(ii) The exception in this paragraph (f)(2) shall not apply if the Board or the appropriate Reserve Bank notifies the bank holding company in writing that it may not take advantage of this exception.

(3) *Contents of request.* (i) A request for a capital distribution under this section shall be filed with the appropriate Reserve Bank and the Board and shall contain the following information:

(A) The bank holding company's current capital plan or an attestation that there have been no changes to the capital plan since it was last submitted to the Federal Reserve;

(B) The purpose of the transaction;

(C) A description of the capital distribution, including for redemptions

or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(D) Any additional information requested by the Board or the appropriate Reserve Bank (which may include, among other things, an assessment of the bank holding company's capital adequacy under a revised stress scenario provided by the Federal Reserve, a revised capital plan, and supporting data).

(ii) Any request submitted with respect to a capital distribution described in paragraph (f)(1)(i) of this section shall also include a plan for restoring the bank holding company's capital to an amount above a minimum level within 30 days and a rationale for why the capital distribution would be appropriate.

(4) *Approval of certain capital distributions.* (i) A bank holding company must obtain approval from the Board or the appropriate Reserve Bank, with concurrence of the Board, before making a capital distribution described in paragraph (f)(1) of this section.

(ii) A request for a capital distribution under this section must be filed with the appropriate Reserve Bank and contain all the information set forth in paragraph (f)(3) of this section.

(iii) The Board or the appropriate Reserve Bank, with concurrence of the Board, will act on a request under this paragraph (f)(4) within 30 calendar days after the receipt of a complete request under paragraph (f)(4)(ii) of this section. The Board or the appropriate Reserve Bank may, at any time, request additional information that it believes is necessary for its decision.

(iv) In acting on a request under this paragraph, the Board or appropriate Reserve Bank will apply the considerations and principles in paragraph (e) of this section. In addition, the Board or the appropriate Reserve Bank may disapprove the transaction if the bank holding company does not provide all of the information required to be submitted under paragraphs (f)(3) and (f)(5)(iii) of this section.

(5) *Disapproval and hearing.* (i) The Board or the appropriate Reserve Bank will notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 10 calendar days after receipt of a disapproval by the Board, the bank holding company may submit a written request for a hearing.

(ii) The Board will order a hearing within 10 calendar days of receipt of the request if it finds that material facts are in dispute, or if it otherwise appears appropriate. Any hearing conducted under this paragraph shall be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

(iii) At the conclusion of the hearing, the Board will by order approve or disapprove the proposed capital distribution on the basis of the record of the hearing.

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 3. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

■ 4. Subpart B is added to read as follows:

Subpart B—Company-Run Stress Test Requirements for Certain U.S. Banking Organizations With Total Consolidated Assets Over $10 Billion and Less Than $50 Billion

Sec.

Subpart B—Company-Run Stress Test Requirements for Certain U.S. Banking Organizations With Total Consolidated Assets Over $10 Billion and Less Than $50 Billion

§ 252.10 [Reserved]

§ 252.11 Authority and purpose.

(a) *Authority.* 12 U.S.C. 321–338a, 1467a(g), 1818, 1831o, 1831p–1, 1844(b), 1844(c), 3906–3909, 5365.

(b) *Purpose.* This subpart implements section 165(i)(2) of the Dodd-Frank Act (12 U.S.C. 5365(i)(2)), which requires a bank holding company with total consolidated assets of greater than $10 billion but less than $50 billion and savings and loan holding companies and state member banks with total consolidated assets of greater than $10 billion to conduct annual stress tests. This subpart also establishes definitions of stress test and related terms, methodologies for conducting stress tests, and reporting and disclosure requirements.

§ 252.12 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Advanced approaches* means the regulatory capital requirements at 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(b) *Adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank that are more adverse than those associated with the baseline scenario and may include trading or other additional components.

(c) *Asset threshold* means—

(1) For a bank holding company, average total consolidated assets of greater than $10 billion but less than $50 billion, and

(2) For a savings and loan holding company or state member bank, average total consolidated assets of greater than $10 billion.

(d) *Average total consolidated assets* means the average of the total consolidated assets as reported by a bank holding company, savings and loan holding company, or state member bank on its Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) or Consolidated Report of Condition and Income (Call Report), as applicable, for the four most recent consecutive quarters. If the bank holding company, savings and loan holding company, or state member bank has not filed the FR Y–9C or Call Report, as applicable, for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C or Call Report, as applicable, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C or Call Report, as applicable, used in the calculation of the average.

(e) *Bank holding company* has the same meaning as in § 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

(f) *Baseline scenario* means a set of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank, and that reflect the consensus views of the economic and financial outlook.

(g) *Capital action* has the same meaning as in § 225.8(c)(2) of the Board's Regulation Y (12 CFR 225.8(c)(2)).

(h) *Covered company subsidiary* means a state member bank that is a subsidiary of a covered company as defined in subpart F of this part.

(i) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(j) *Foreign banking organization* has the same meaning as in § 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

(k) *Planning horizon* means the period of at least nine quarters, beginning on the first day of a stress test cycle (on October 1) over which the relevant projections extend.

(l) *Pre-provision net revenue* means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

(m) *Provision for loan and lease losses* means the provision for loan and lease losses as reported by the bank holding company, savings and loan holding company, or state member bank on the FR Y–9C or Call Report, as appropriate.

(n) *Regulatory capital ratio* means a capital ratio for which the Board established minimum requirements for the company by regulation or order, including, as applicable, a company's tier 1 and supplementary leverage ratio and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under the Board's regulations, including appendices A, D, and E to 12 CFR part 225, appendices A, B, and E to 12 CFR part 208, and 12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR 217.300, or any successor regulation. For state member banks other than covered company subsidiaries and for all bank holding companies, for the stress test cycle that commences on October 1, 2013, regulatory capital ratios must be calculated pursuant to the regulatory capital framework set forth in 12 CFR part 225, appendix A, and not the regulatory capital framework set forth in 12 CFR part 217.

(o) *Savings and loan holding company* has the same meaning as in § 238.2(m) of the Board's Regulation LL (12 CFR 238.2(m)).

(p) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank that the Board annually determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.

(q) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

(r) *State member bank* has the same meaning as in § 208.2(g) of the Board's Regulation H (12 CFR 208.2(g)).

(s) *Stress test* means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a bank holding company, savings and loan holding company, or state member bank over the planning horizon, taking into account the current condition, risks, exposures, strategies, and activities.

(t) *Stress test cycle* means the period between October 1 of a calendar year and September 30 of the following calendar year.

(u) *Subsidiary* has the same meaning as in § 225.2(o) the Board's Regulation Y (12 CFR 225.2(o)).

§ 252.13 Applicability.

(a) *Compliance date for bank holding companies and state member banks that meet the asset threshold on or before December 31, 2012.* (1) *Bank holding companies*—(i) *In general.* Except as provided in paragraph (a)(1)(ii) of this section, a bank holding company that meets the asset threshold on or before December 31, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2013, unless that time is extended by the Board in writing.[1]

(ii) *SR Letter 01–01.* A U.S.-domiciled bank holding company that is a subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010) must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2015, unless that time is extended by the Board in writing.

(2) *State member banks.* (i) A state member bank that meets the asset threshold as of November 15, 2012, and is a subsidiary of a bank holding company that participated in the 2009 Supervisory Capital Assessment Program, or a successor to such bank holding company, must comply with the requirements of this subpart beginning with the stress test cycle that commences on November 15, 2012, unless that time is extended by the Board in writing.

(ii) A state member bank that meets the asset threshold on or before December 31, 2012, and is not described in paragraph (a)(2)(i) of this section must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2013, unless that time is extended by the Board in writing.[2]

(b) *Compliance date for bank holding companies and state member banks that meet the asset threshold after December 31, 2012.* A bank holding company or state member bank that meets the asset threshold after December 31, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company meets the asset threshold, unless that time is extended by the Board in writing.

(c) *Compliance date for savings and loan holding companies.* (1) A savings and loan holding company that meets the asset threshold on or before the date on which it is subject to minimum regulatory capital requirements must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company becomes subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date.

(2) A savings and loan holding company that meets the asset threshold after the date on which it is subject to minimum regulatory capital requirements must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company becomes subject to the Board's minimum regulatory capital requirements, unless that time is extended by the Board in writing.

(d) *Ongoing application.* A bank holding company, savings and loan holding company, or state member bank that meets the asset threshold will remain subject to the requirements of this subpart unless and until its total consolidated assets fall below $10 billion for each of four consecutive quarters, as reported on the FR Y–9C or Call Report, as applicable. The calculation will be effective on the as-of date of the fourth consecutive FR Y–9C or Call Report, as applicable.

(e) *Interaction with 12 CFR part 252, subpart F.* Notwithstanding paragraph (d) of this section, a bank holding company or savings and loan holding company that becomes a covered company as defined in subpart F of this part and conducts a stress test pursuant to that subpart is not subject to the requirements of this subpart.

(f) *Advanced approaches.* Notwithstanding any other requirement

[1] *See* § 252.12(c).

[2] *See* § 252.12(c).

in this section, for a given stress test cycle:

(1) Until October 1, 2015, a bank holding company, savings and loan holding company, or state member bank's estimates of its pro forma regulatory capital ratios over the planning horizon shall not include estimates using the advanced approaches; and

(2) Beginning October 1, 2015, a bank holding company, savings and loan holding company, or state member bank's estimates of its pro forma regulatory capital ratios over the planning horizon shall not include estimates using the advanced approaches if the company is notified on or after the first day of that stress test cycle (October 1) that it is required to calculate its risk-based capital requirements using the advanced approaches.

§ 252.14 Annual stress test.

(a) *General requirements.* (1) *Savings and loan holding companies with average total consolidated assets of $50 billion or more and state member banks that are covered company subsidiaries.* A savings and loan holding company with average total consolidated assets of $50 billion or more or a state member bank that is a covered company subsidiary or must conduct a stress test by January 5 of each calendar year based on data as of September 30 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(2) *Bank holding companies, savings and loan holding companies with total consolidated assets of less than $50 billion, and state member banks that are not covered company subsidiaries.* Except as provided in paragraph (a)(1), a bank holding company, savings and loan holding company, or state member bank must conduct a stress test by March 31 of each calendar year using financial statement data as of September 30 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) *Scenarios provided by the Board.* (1) *In general.* In conducting a stress test under this section, a bank holding company, savings and loan holding company, or state member bank must use the scenarios provided by the Board. Except as provided in paragraphs (b)(2) and (3) of this section, the Board will provide a description of the scenarios to each bank holding company, savings and loan holding company, or state member bank no later than November 15 of that calendar year.

(2) *Additional components.* (i) The Board may require a bank holding company, savings and loan holding company, or state member bank with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y–14), to include a trading and counterparty component in its adverse and severely adverse scenarios in the stress test required by this section. The Board may also require a state member bank that is subject to 12 CFR part 208, appendix E and that is a subsidiary of a bank holding company subject to paragraph (b)(2)(i) of this section or § 252.54(b)(2)(i) to include a trading and counterparty component in the state member bank's adverse and severely adverse scenarios in the stress test required by this section. The data used in this component will be as of a date between October 1 and December 1 of that calendar year selected by the Board, and the Board will communicate the as-of date and a description of the component to the company no later than December 1 of the calendar year.

(ii) The Board may require a bank holding company, savings and loan holding company, or state member bank to include one or more additional components in its adverse and severely adverse scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Additional scenarios.* The Board may require a bank holding company, savings and loan holding company, or state member bank to include one or more additional scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(4) *Notice and response.* If the Board requires a bank holding company, savings and loan holding company, or state member bank to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2)(ii) of this section or to use one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing no later than September 30. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s). Within 14 calendar days of receipt of a notification under this paragraph, the bank holding company, savings and loan holding company, or state member bank may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(s), including an explanation as to why the reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request. The Board will provide the bank holding company, savings and loan holding company, or state member bank with a description of any additional component(s) or additional scenario(s) by December 1.

§ 252.15 Methodologies and practices.

(a) *Potential impact on capital.* In conducting a stress test under § 252.14, for each quarter of the planning horizon, a bank holding company, savings and loan holding company, or state member bank must estimate the following for each scenario required to be used:

(1) Losses, pre-provision net revenue, provision for loan and lease losses, and net income; and

(2) The potential impact on pro forma regulatory capital levels and pro forma capital ratios (including regulatory capital ratios and any other capital ratios specified by the Board), incorporating the effects of any capital actions over the planning horizon and maintenance of an allowance for loan losses appropriate for credit exposures throughout the planning horizon.

(b) *Assumptions regarding capital actions.* In conducting a stress test under § 252.14, a bank holding company or savings and loan holding company is required to make the following assumptions regarding its capital actions over the planning horizon—

(1) For the first quarter of the planning horizon, the bank holding company or savings and loan holding company must take into account its actual capital actions as of the end of that quarter; and

(2) For each of the second through ninth quarters of the planning horizon, the bank holding company or savings and loan holding company must include in the projections of capital—

(i) Common stock dividends equal to the quarterly average dollar amount of common stock dividends that the company paid in the previous year (that is, the first quarter of the planning horizon and the preceding three calendar quarters);

(ii) Payments on any other instrument that is eligible for inclusion in the numerator of a regulatory capital ratio equal to the stated dividend, interest, or principal due on such instrument during the quarter; and

(iii) An assumption of no redemption or repurchase of any capital instrument

that is eligible for inclusion in the numerator of a regulatory capital ratio.

(c) *Controls and oversight of stress testing processes.* (1) *In general.* The senior management of a bank holding company, savings and loan holding company, or state member bank must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements in this subpart. These policies and procedures must, at a minimum, describe the company's stress testing practices and methodologies, and processes for validating and updating the company's stress test practices and methodologies consistent with applicable laws, regulations, and supervisory guidance.

(2) *Oversight of stress testing processes.* The board of directors, or a committee thereof, of a bank holding company, savings and loan holding company, or state member bank must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the company may warrant, but no less than annually. The board of directors and senior management of the bank holding company, savings and loan holding company, or state member bank must receive a summary of the results of the stress test conducted under this section.

(3) *Role of stress testing results.* The board of directors and senior management of a bank holding company, savings and loan holding company, or state member bank must consider the results of the stress test in the normal course of business, including but not limited to, the banking organization's capital planning, assessment of capital adequacy, and risk management practices.

§ 252.16 Reports of stress test results.

(a) *Reports to the Board of stress test results.* (1) *Savings and loan holding companies with average total consolidated assets of $50 billion or more and state member banks that are covered company subsidiaries.* A savings and loan holding company with average total consolidated assets of $50 billion or more or a state member bank that is a covered company subsidiary must report the results of the stress test to the Board by January 5 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(2) *Bank holding companies, savings and loan holding companies, and state member banks.* Except as provided in paragraph (a)(1) of this section, a bank holding company, savings and loan holding company, or state member bank must report the results of the stress test to the Board by March 31 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(b) *Contents of reports.* The report required under paragraph (a) of this section must include, under the baseline scenario, adverse scenario, severely adverse scenario, and any other scenario required under § 252.14(b)(3), a description of the types of risks being included in the stress test; a summary description of the methodologies used in the stress test; and, for each quarter of the planning horizon, estimates of aggregate losses, pre-provision net revenue, provision for loan and lease losses, net income, and regulatory capital ratios. In addition, the report must include an explanation of the most significant causes for the changes in regulatory capital ratios and any other information required by the Board. This paragraph will remain applicable until such time as the Board issues a reporting form to collect the results of the stress test required under § 252.14.

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

§ 252.17 Disclosure of stress test results.

(a) *Public disclosure of results.* (1) *In general.* (i) Except as provided in paragraph (a)(1)(ii) or (b)(2) of this section, a bank holding company, savings and loan holding company, or state member bank must disclose a summary of the results of the stress test in the period beginning on June 15 and ending on June 30 unless that time is extended by the Board in writing.

(ii) Except as provided in paragraph (b)(2) of this section, a state member bank that is a covered company subsidiary or a savings and loan holding company with average total consolidated assets of $50 billion or more must disclose a summary of the results of the stress test in the period beginning on March 15 and ending on March 31, unless that time is extended by the Board in writing.

(2) *Initial disclosure.* A bank holding company, savings and loan holding company, or state member bank that has total consolidated assets of less than $50 billion on or before December 31, 2012, must comply with the requirements of this section beginning with the stress test cycle commencing on October 1, 2014.

(3) *Disclosure method.* The summary required under this section may be disclosed on the Web site of a bank holding company, savings and loan holding company, or state member bank, or in any other forum that is reasonably accessible to the public.

(b) *Summary of results.* (1) *Bank holding companies and savings and loan holding companies.* A bank holding company or savings and loan holding company must disclose, at a minimum, the following information regarding the severely adverse scenario:

(i) A description of the types of risks included in the stress test;

(ii) A summary description of the methodologies used in the stress test;

(iii) Estimates of—

(A) Aggregate losses;

(B) Pre-provision net revenue;

(C) Provision for loan and lease losses;

(D) Net income; and

(E) Pro forma regulatory capital ratios and any other capital ratios specified by the Board;

(iv) An explanation of the most significant causes for the changes in regulatory capital ratios; and

(v) With respect to a stress test conducted by an insured depository institution subsidiary of the bank holding company or savings and loan holding company pursuant to section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, changes in regulatory capital ratios and any other capital ratios specified by the Board of the depository institution subsidiary over the planning horizon, including an explanation of the most significant causes for the changes in regulatory capital ratios.

(2) *State member banks that are subsidiaries of bank holding companies.* A state member bank that is a subsidiary of a bank holding company will satisfy the public disclosure requirements under section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act when the bank holding company publicly discloses summary results of its stress test pursuant to this section or § 252.58, unless the Board determines that the disclosures at the holding company level do not adequately capture the potential impact of the scenarios on the capital of the state member bank. In this case, the state member bank must make the same disclosure as required by paragraph (b)(3) of this section.

(3) *State member banks that are not subsidiaries of bank holding companies.*

A state member bank that is not a subsidiary of a bank holding company must disclose, at a minimum, the following information regarding the severely adverse scenario:

(i) A description of the types of risks being included in the stress test;

(ii) A summary description of the methodologies used in the stress test;

(iii) Estimates of—

(A) Aggregate losses;

(B) Pre-provision net revenue

(C) Provision for loan and lease losses;

(D) Net income; and

(E) Pro forma regulatory capital ratios and any other capital ratios specified by the Board; and

(iv) An explanation of the most significant causes for the changes in regulatory capital ratios.

(c) *Content of results.* (1) The disclosure of aggregate losses, pre-provision net revenue, provision for loan and lease losses, and net income that is required under paragraph (b) of this section must be on a cumulative basis over the planning horizon.

(2) The disclosure of pro forma regulatory capital ratios and any other capital ratios specified by the Board that is required under paragraph (b) of this section must include the beginning value, ending value and minimum value of each ratio over the planning horizon.

■ 5. Subpart E is added to read as follows:

Subpart E—Supervisory Stress Test Requirements for U.S. Bank Holding Companies With $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

Sec.

Subpart E—Supervisory Stress Test Requirements for U.S. Bank Holding Companies With $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

§ 252.40 [Reserved].

§ 252.41 Authority and purpose.

(a) *Authority.* 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

(b) *Purpose.* This subpart implements section 165(i)(1) of the Dodd-Frank Act (12 U.S.C. 5365(i)(1)), which requires the Board to conduct annual analyses of nonbank financial companies supervised by the Board and bank holding companies with $50 billion or more in total consolidated assets to evaluate whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

§ 252.42 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(b) *Adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company that are more adverse than those associated with the baseline scenario and may include trading or other additional components.

(c) *Average total consolidated assets* means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average.

(d) *Bank holding company* has the same meaning as in § 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

(e) *Baseline scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that reflect the consensus views of the economic and financial outlook.

(f) *Covered company* means:

(1) A bank holding company (other than a foreign banking organization) with average total consolidated assets of $50 billion or more; and

(2) A nonbank financial company supervised by the Board.

(g) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(h) *Foreign banking organization* has the same meaning as in § 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

(i) *Nonbank financial company supervised by the Board* means a nonbank financial company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(j) *Planning horizon* means the period of at least nine quarters, beginning on the first day of a stress test cycle (on October 1) over which the relevant projections extend.

(k) *Pre-provision net revenue* means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

(l) *Provision for loan and lease losses* means the provision for loan and lease losses as reported by the covered company on the FR Y–9C.

(m) *Regulatory capital ratio* means a capital ratio for which the Board established minimum requirements for the company by regulation or order, including, as applicable, the company's tier 1 and supplementary leverage ratios and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under appendices A, D, and E to this part (12 CFR part 225) and 12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR 217.300, or any successor regulation.

(n) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board annually determines are appropriate for use in the supervisory stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.

(o) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

(p) *Stress test cycle* means the period between October 1 of a calendar year and September 30 of the following calendar year.

(q) *Subsidiary* has the same meaning as in § 225.2(o) the Board's Regulation Y (12 CFR 225.2).

(r) *Tier 1 common ratio* has the same meaning as in the Board's Regulation Y (12 CFR 225.8).

§ 252.43 Applicability.

(a) *Compliance date for bank holding companies that are covered companies as of November 15, 2012.* (1) *In general.* Except as provided in paragraph (a)(2) or (a)(3) of this section, a bank holding company that is a covered company as

of November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2013, unless that time is extended by the Board in writing.

(2) *2009 Supervisory Capital Assessment Program.* A bank holding company that participated in the 2009 Supervisory Capital Assessment Program, or a successor to such a bank holding company, must comply with the requirements of this subpart beginning with the stress test cycle that commences on November 15, 2012, unless that time is extended by the Board in writing.

(3) *SR Letter 01–01.* A U.S.-domiciled bank holding company that is a covered company as of November 15, 2012, and is a subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010) must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2015, unless that time is extended by the Board in writing.

(b) *Compliance date for institutions that become covered companies after November 15, 2012.* (1) *Bank holding companies.* A bank holding company that becomes a covered company after November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the bank holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) *Nonbank financial companies supervised by the Board.* A company that becomes a nonbank financial company supervised by the Board must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company first becomes subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date.

(c) *Ongoing application.* A bank holding company that is a covered company will remain subject to the requirements of this subpart unless and until its total consolidated assets fall below $50 billion for each of four consecutive quarters, as reported on the FR Y–9C. The calculation will be effective on the as-of date of the fourth consecutive FR Y–9C.

(d) *Advanced approaches.* Notwithstanding any other requirement in this section, for a given stress test cycle:

(1) Until October 1, 2015, the Board's analysis a covered company's capital in a given stress test cycle will not include estimates using the advanced approaches; and

(2) Beginning October 1, 2015, the Board's analysis of a covered company's capital in a given stress test cycle will not include estimates using the advanced approaches if the covered company is notified on or after the first day of that stress test cycle (October 1) that the covered company is required to calculate its risk-based capital requirements using the advanced approaches.

§ 252.44 Annual analysis conducted by the Board.

(a) *In general.* (1) On an annual basis, the Board will conduct an analysis of each covered company's capital, on a total consolidated basis, taking into account all relevant exposures and activities of that covered company, to evaluate the ability of the covered company to absorb losses in specified economic and financial conditions.

(2) The analysis will include an assessment of the projected losses, net income, and pro forma capital levels and regulatory capital ratios, tier 1 common ratio, and other capital ratios for the covered company and use such analytical techniques that the Board determines are appropriate to identify, measure, and monitor risks of the covered company that may affect the financial stability of the United States.

(3) In conducting the analyses, the Board will coordinate with the appropriate primary financial regulatory agencies and the Federal Insurance Office, as appropriate.

(b) *Economic and financial scenarios related to the Board's analysis.* The Board will conduct its analysis under this section using a minimum of three different scenarios, including a baseline scenario, adverse scenario, and severely adverse scenario. The Board will notify covered companies of the scenarios that the Board will apply to conduct the analysis for each stress test cycle by no later than November 15 of each year, except with respect to trading or any other components of the scenarios and any additional scenarios that the Board will apply to conduct the analysis, which will be communicated by no later than December 1.

§ 252.45 Data and information required to be submitted in support of the Board's analyses.

(a) *Regular submissions.* Each covered company must submit to the Board such data, on a consolidated basis, that the Board determines is necessary in order for the Board to derive the relevant pro forma estimates of the covered company over the planning horizon under the scenarios described in § 252.44(b).

(b) *Additional submissions required by the Board.* The Board may require a covered company to submit any other information on a consolidated basis that the Board deems necessary in order to:

(1) Ensure that the Board has sufficient information to conduct its analysis under this subpart; and

(2) Project a company's pre-provision net revenue, losses, provision for loan and lease losses, and net income; and, pro forma capital levels, regulatory capital ratios, tier 1 common ratio, and any other capital ratio specified by the Board under the scenarios described in § 252.44(b).

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

§ 252.46 Review of the Board's analysis; publication of summary results.

(a) *Review of results.* Based on the results of the analysis conducted under this subpart, the Board will conduct an evaluation to determine whether the covered company has the capital, on a total consolidated basis, necessary to absorb losses and continue its operation by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary under baseline, adverse and severely adverse scenarios, and any additional scenarios.

(b) *Communication of results to covered companies.* The Board will convey to a covered company a summary of the results of the Board's analyses of such covered company within a reasonable period of time, but no later than March 31.

(c) *Publication of results by the Board.* By March 31 of each calendar year, the Board will disclose a summary of the results of the Board's analyses of a covered company.

§ 252.47 Use requirement.

(a) *In general.* The board of directors and senior management of each covered company must consider the results of the analysis conducted by the Board under this subpart, as appropriate:

(1) As part of the covered company's capital plan and capital planning process, including when making

changes to the covered company's capital structure (including the level and composition of capital);

(2) When assessing the covered company's exposures, concentrations, and risk positions; and

(3) In the development or implementation of any plans of the covered company for recovery or resolution.

(b) *Resolution plan updates.* Each covered company must update its resolution plan as the Board determines appropriate, based on the results of the Board's analyses of the covered company under this subpart.

■ 6. Subpart F is revised to read as follows:

Subpart F—Company-Run Stress Test Requirements for U.S. Bank Holding Companies With $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

Subpart F—Company-Run Stress Test Requirements for U.S. Bank Holding Companies With $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

§ 252.50 [Reserved].

§ 252.51 Authority and purpose.

(a) *Authority.* 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

(b) *Purpose.* This subpart implements section 165(i)(2) of the Dodd-Frank Act (12 U.S.C. 5365(i)(2)), which requires a covered company to conduct annual and semi-annual stress tests. This subpart also establishes definitions of stress test and related terms, methodologies for conducting stress tests, and reporting and disclosure requirements.

§ 252.52 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(b) *Adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company that are more adverse than those associated with the baseline scenario and may include trading or other additional components.

(c) *Average total consolidated assets* means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average.

(d) *Bank holding company* has the same meaning as in § 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

(e) *Baseline scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that reflect the consensus views of the economic and financial outlook.

(f) *Capital action* has the same meaning as in § 225.8(c)(2) of the Board's Regulation Y (12 CFR 225.8(c)(2)).

(g) *Covered company* means:

(1) A bank holding company (other than a foreign banking organization) with average total consolidated assets of $50 billion or more; and

(2) A nonbank financial company supervised by the Board.

(h) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(i) *Foreign banking organization* has the same meaning as in § 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

(j) *Nonbank financial company supervised by the Board* means a nonbank financial company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(k) *Planning horizon* means the period of at least nine quarters, beginning on the first day of a stress test cycle (on October 1 or April 1, as appropriate) over which the relevant projections extend.

(l) *Pre-provision net revenue* means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

(m) *Provision for loan and lease losses* means the provision for loan and lease losses as reported by the covered company on the FR Y–9C.

(n) *Regulatory capital ratio* means a capital ratio for which the Board established minimum requirements for the company by regulation or order, including, as applicable, the company's tier 1 and supplementary leverage ratios and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under appendices A, D, and E to this part (12 CFR part 225) and 12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR 217.300, or any successor regulation.

(o) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board, or with respect to the mid-cycle stress test required under § 252.55, the covered company, annually determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.

(p) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

(q) *Stress test* means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered company over the planning horizon, taking into account its current condition, risks, exposures, strategies, and activities.

(r) *Stress test cycle* means the period between October 1 of a calendar year and September 30 of the following calendar year.

(s) *Subsidiary* has the same meaning as in § 225.2(o) the Board's Regulation Y (12 CFR 225.2).

(t) *Tier 1 common ratio* has the same meaning as in § 225.8 of the Board's Regulation Y (12 CFR 225.8).

§ 252.53 Applicability.

(a) *Compliance date for bank holding companies that are covered companies as of November 15, 2012.* (1) *In general.* Except as provided in paragraph (a)(2) or (a)(3) of this section, a bank holding company that is a covered company as of November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle commencing on October 1, 2013, unless that time is extended by the Board in writing.

(2) *2009 Supervisory Capital Assessment Program.* A bank holding company that participated in the 2009 Supervisory Capital Assessment Program, or a successor to such a bank holding company, must comply with the requirements of this subpart beginning with the stress test cycle commencing on November 15, 2012, unless that time is extended by the Board in writing.

(3) *SR Letter 01–01.* A U.S.-domiciled bank holding company that is a covered company as of November 15, 2012, and is a subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010) must comply with the requirements of this subpart beginning with the stress test cycle commencing on October 1, 2015, unless that time is extended by the Board in writing.

(b) *Compliance date for institutions that become covered companies after November 15, 2012.* (1) *Bank holding companies.* A bank holding company that becomes a covered company after November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the bank holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) *Nonbank financial companies supervised by the Board.* A company that becomes a nonbank financial company supervised by the Board must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which company first becomes subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date.

(c) *Ongoing application.* A bank holding company that is a covered company will remain subject to the requirements of this subpart unless and until its total consolidated assets fall below $50 billion for each of four consecutive quarters, as reported on the FR Y–9C. The calculation will be effective on the as-of date of the fourth consecutive FR Y–9C.

(d) *Advanced approaches.* Notwithstanding any other requirement in this section, for a given capital plan cycle:

(1) Until October 1, 2015, a covered company's estimates of its pro forma regulatory capital ratios and the estimate of its pro forma tier 1 common ratio over the planning horizon shall not include estimates using the advanced approaches; and

(2) Beginning October 1, 2015, for a given stress test cycle, a covered company's estimates of its pro forma regulatory capital ratios and the estimate of its pro forma tier 1 common ratio over the planning horizon shall not include estimates using the advanced approaches if the company is notified on or after the first day of that stress test cycle (October 1) that it is required to calculate its risk-based capital requirements using the advanced approaches.

§ 252.54 Annual stress test.

(a) *In general.* A covered company must conduct an annual stress test by January 5 during each stress test cycle based on data as of September 30 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) *Scenarios provided by the Board.* (1) *In general.* In conducting a stress test under this section, a covered company must use the scenarios provided by the Board. Except as provided in paragraphs (b)(2) and (b)(3) of this section, the Board will provide a description of the scenarios to each covered company no later than November 15 of that calendar year.

(2) *Additional components.* (i) The Board may require a covered company with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y–14), to include a trading and counterparty component in its adverse and severely adverse scenarios in the stress test required by this section. The data used in this component will be as of a date between October 1 and December 1 of that calendar year selected by the Board, and the Board will communicate the as-of date and a description of the component to the company no later than December 1 of the calendar year.

(ii) The Board may require a covered company to include one or more additional components in its adverse and severely adverse scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Additional scenarios.* The Board may require a covered company to use one or more additional scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(4) *Notice and response.* If the Board requires a covered company to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2)(ii) of this section or to use one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing no later than September 30. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s). Within 14 calendar days of receipt of a notification under this paragraph, the covered company may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(s), including an explanation as to why the reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request. The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by December 1.

§ 252.55 Mid-cycle stress test.

(a) *Mid-cycle stress test requirement.* In addition to the stress test required under § 252.54, a covered company must conduct a stress test by July 5 during each stress test cycle based on data as of March 31 of that calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) *Scenarios related to mid-cycle stress tests.* (1) *In general.* A covered company must develop and employ a minimum of three scenarios, including a baseline scenario, adverse scenario, and severely adverse scenario, that are appropriate for its own risk profile and operations, in conducting the stress test required by this section.

(2) *Additional components.* The Board may require a covered company to include one or more additional components in its adverse and severely adverse scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Additional scenarios.* The Board may require a covered company to use one or more additional scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(4) *Notice and response.* If the Board requires a covered company to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2) of this section or one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing no later than March 31. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s). Within 14 calendar days of receipt of a notification under this paragraph, the covered company may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(s), including an explanation as to why the reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request. The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by June 1.

§ 252.56 Methodologies and practices.

(a) *Potential impact on capital.* In conducting a stress test under §§ 252.54 and 252.55, for each quarter of the planning horizon, a covered company must estimate the following for each scenario required to be used:

(1) Losses, pre-provision net revenue, provision for loan and lease losses, and net income; and

(2) The potential impact on pro forma regulatory capital levels and pro forma capital ratios (including regulatory capital ratios, the tier 1 common ratio, and any other capital ratios specified by the Board), incorporating the effects of any capital actions over the planning horizon and maintenance of an allowance for loan losses appropriate for credit exposures throughout the planning horizon.

(b) *Assumptions regarding capital actions.* In conducting a stress test under §§ 252.54 and 252.55, a covered company is required to make the following assumptions regarding its capital actions over the planning horizon—

(1) For the first quarter of the planning horizon, the covered company must take into account its actual capital actions as of the end of that quarter; and

(2) For each of the second through ninth quarters of the planning horizon, the covered company must include in the projections of capital:

(i) Common stock dividends equal to the quarterly average dollar amount of common stock dividends that the company paid in the previous year (that is, the first quarter of the planning horizon and the preceding three calendar quarters);

(ii) Payments on any other instrument that is eligible for inclusion in the numerator of a regulatory capital ratio equal to the stated dividend, interest, or principal due on such instrument during the quarter; and

(iii) An assumption of no redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio.

(c) *Controls and oversight of stress testing processes.* (1) *In general.* The senior management of a covered company must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements in this subpart. These policies and procedures must, at a minimum, describe the covered company's stress testing practices and methodologies, and processes for validating and updating the company's stress test practices and methodologies consistent with applicable laws, regulations, and supervisory guidance. Policies of covered companies must also describe processes for scenario development for the mid-cycle stress test required under § 252.55.

(2) *Oversight of stress testing processes.* The board of directors, or a committee thereof, of a covered company must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the covered company may warrant, but no less than annually. The board of directors and senior management of the covered company must receive a summary of the results of any stress test conducted under this subpart.

(3) *Role of stress testing results.* The board of directors and senior management of each covered company must consider the results of the analysis it conducts under this subpart, as appropriate:

(i) As part of the covered company's capital plan and capital planning process, including when making changes to the covered company's capital structure (including the level and composition of capital);

(ii) When assessing the covered company's exposures, concentrations, and risk positions; and

(iii) In the development or implementation of any plans of the covered company for recovery or resolution.

§ 252.57 Reports of stress test results.

(a) *Reports to the Board of stress test results.* (1) A covered company must report the results of the stress test required under § 252.54 to the Board by January 5 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(2) A covered company must report the results of the stress test required under § 252.55 to the Board by July 5 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(b) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

§ 252.58 Disclosure of stress test results.

(a) *Public disclosure of results.* (1) *In general.* (i) A covered company must disclose a summary of the results of the stress test required under § 252.54 in the period beginning on March 15 and ending on March 31, unless that time is extended by the Board in writing.

(ii) A covered company must disclose a summary of the results of the stress test required under § 252.55 in the period beginning on September 15 and ending on September 30, unless that time is extended by the Board in writing.

(2) *Disclosure method.* The summary required under this section may be disclosed on the Web site of a covered company, or in any other forum that is reasonably accessible to the public.

(b) *Summary of results.* A covered company must disclose, at a minimum, the following information regarding the severely adverse scenario:

(1) A description of the types of risks included in the stress test;

(2) A general description of the methodologies used in the stress test, including those employed to estimate losses, revenues, provision for loan and lease losses, and changes in capital positions over the planning horizon;

(3) Estimates of—

(i) Pre-provision net revenue and other revenue;

(ii) Provision for loan and lease losses, realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gains;

(iii) Net income before taxes;

(iv) Loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by subportfolio, including: domestic closed-end first-lien mortgages; domestic junior lien mortgages and home equity lines of credit; commercial and industrial loans; commercial real estate loans; credit card exposures; other consumer loans; and all other loans; and

(v) Pro forma regulatory capital ratios and the tier 1 common ratio and any other capital ratios specified by the Board;

(4) An explanation of the most significant causes for the changes in regulatory capital ratios and the tier 1 common ratio; and

(5) With respect to a stress test conducted pursuant to section 165(i)(2) of the Dodd-Frank Act by an insured depository institution that is a subsidiary of the covered company and that is required to disclose a summary of its stress tests results under applicable regulations, changes in regulatory capital ratios and any other capital ratios specified by the Board of the depository institution subsidiary over the planning horizon, including an explanation of the most significant causes for the changes in regulatory capital ratios.

(c) *Content of results.* (1) The following disclosures required under paragraph (b) of this section must be on a cumulative basis over the planning horizon:

(i) Pre-provision net revenue and other revenue;

(ii) Provision for loan and lease losses, realized losses/gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gains;

(iii) Net income before taxes; and

(iv) Loan losses in the aggregate and by subportfolio.

(2) The disclosure of pro forma regulatory capital ratios, the tier 1 common ratio, and any other capital ratios specified by the Board that is required under paragraph (b) of this section must include the beginning value, ending value, and minimum value of each ratio over the planning horizon.

■ 7. Subparts G and H are removed and reserved.

■ 8. Subparts J through U are added and reserved.

By order of the Board of Governors of the Federal Reserve System, March 4, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–05053 Filed 3–10–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–0812; Amendment No. 25–138]

RIN 2120–AK36

Requirements for Chemical Oxygen Generators Installed on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the type certification requirements for chemical oxygen generators installed on transport category airplanes so the generators are secure and not subject to misuse. This rule increases the level of security for future transport category airplane designs but does not directly affect the existing fleet of those airplanes.

DATES: This action becomes effective *May 12, 2014.*

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How to Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Jeff Gardlin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: (425) 227–2136; email: *jeff.gardlin@faa.gov.*

For legal questions concerning this action, contact Douglas Anderson, Federal Aviation Administration, Office of the Regional Counsel, ANM–7, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: (425) 227–2166; email: *douglas.anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue regulations on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This final rule is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it revises the safety standards for design and operation of transport category airplanes.

List of Abbreviations and Acronyms Frequently Used in This Document

AD Airworthiness Directive
ARAC Aviation Rulemaking Advisory Committee
COG Chemical Oxygen Generator
LOARC Lavatory Oxygen Aviation Rulemaking Committee
SFAR Special Federal Aviation Regulation

I. Overview of Final Rule

This final rule adopts new standards for chemical oxygen generators (COG) installed in transport category airplanes. These new standards, based on the recommendations of the Lavatory Oxygen Aviation Rulemaking Committee (LOARC), pertain to future applications for type certificates, address potential security vulnerabilities with COG installations, and provide performance-based options for acceptable methods of compliance.

II. Background

The FAA became aware of security vulnerabilities with certain types of oxygen systems installed inside the lavatories of most transport category airplanes. To address the underlying security issues, the FAA chartered an aviation rulemaking committee (ARC) to make recommendations regarding new standards for oxygen system installations, as well as how to implement those standards. Specifically, the LOARC was tasked to:

- Establish criteria for in-service, new production and new type design airplanes, preferably in the form of performance standards, for safe and secure installation of lavatory oxygen systems;
- Determine whether the same criteria should apply to the existing fleet and to new production and type designs;
- Establish what type of safety assessment approach should be used, for example, in accordance with Society of Automotive Engineers (SAE)

International Document ARP5577[1] or Title 14, Code of Federal Regulations (14 CFR) 25.1309, as well as define content and procedures of the safety assessment;

- Determine whether tamper resistance, active tamper evidence, or different system design characteristics are equivalent options;
- Develop guidance as necessary to satisfy the recommended criteria for each system design characteristic as appropriate; and
- Consider the advantages and disadvantages of different implementation options and recommend a schedule(s) for implementation.

The LOARC identified five key subjects to focus on to develop its recommendations and fulfill its charter. Those subjects were:

- Design considerations—identifying and characterizing the design constraints and key factors affecting an installation.
- Security standards—identifying the necessary components of a secure installation, in terms of both new designs and for retrofit.
- System performance—identifying the factors that affect system performance in general and how modifications to enhance security might affect system performance.
- Implementation considerations—identifying the major factors to implement the new requirements into the fleet as expeditiously as practicable, as well as assessing how long certain actions will take.
- Other affected areas—characterizing the parameters that resulted in the determination of a security vulnerability for lavatory COG installations and establishing criteria for evaluating other installations against those characteristics.

The ARC submitted its recommendations to the FAA. Those recommendations are the basis for these new standards. On January 9, 2013, the FAA published a notice of proposed rulemaking (NPRM), Notice No. 13–01, entitled Requirements for Chemical Oxygen Generators Installed on Transport Category Airplanes in the **Federal Register** (78 FR 1765). The comment period for the NPRM closed on March 11, 2013. Additional background and historical information is contained in the NPRM. (See the docket for this rulemaking at *www.regulations.gov.*)

[1] Aerospace Recommended Practice (ARP) 5577, *Aircraft Lightning Direct Effects Certification*, dated September 30, 2002.

III. Discussion of Public Comments and Final Rule

The FAA received comments from four commenters regarding the NPRM for this final rule. Those commenters were the Association of Flight Attendants, The Boeing Company (hereafter referred to as "Boeing"), Bombardier, and an individual commenter.

Support for the NPRM

The Association of Flight Attendants and Bombardier concurred with the proposal without further comment.

Requests To Revise Applicability

Boeing commented that the proposed rule should be limited to lavatory installations and indicated that this would be consistent with the LOARC's recommendation. We disagree. The LOARC generalized its recommendations to apply to any COG installation. The effect of these new regulations on any given COG installation will vary. For most interior arrangements, lavatories are the only installation where design changes will be necessary. We did not change this final rule based on this comment.

Boeing proposed that we modify the applicability of the proposed rule to correspond with Airworthiness Directive (AD) 2011–04–09, Amendment 39–16630 (76 FR 12556, March 8, 2011), such that all-cargo airplanes and airplanes operating under Code of Federal Regulations (CFR) parts other than part 121 operations would not be affected. We disagree. While the final rule is intended to address the security of COGs on primarily passenger-carrying airplanes operating under part 121, all types of operations will benefit to some degree. Once installations are defined for an airplane type, the airplane could be operated under any operating regulation and would not require changes. This approach also accommodates future changes in operating requirements by making the COG standards a basic design requirement. Also, § 25.1450 contains a provision that excludes compliance with the new standards for airplanes approved using Special Federal Aviation Regulation (SFAR) 109. We did not change this final rule based on this comment.

An individual commented that the in-service fleet should be modified for any COG installation and not just lavatories. We disagree. The proposed rule did not address in-service airplanes, so adding retrofit requirements would be beyond the scope of the proposal. However, the FAA has taken action to revise COG installations that have a known unsafe condition by issuing AD 2011–04–09, Amendment 39–16630 (76 FR 12556, March 8, 2011) and AD 2012–11–09, Amendment 39–17072 (77 FR 38000, June 26, 2012). If we identify additional unsafe conditions on in-service airplanes, we will issue additional ADs. We did not change this final rule based on this comment.

The same individual also proposed that the requirements apply to newly-produced airplanes, in addition to new type certificates. We disagree. As discussed above, the FAA has already taken action on installations identified as being potentially unsafe. The referenced ADs apply to newly produced airplanes, as well as existing airplanes. This final rule raises the level of safety for future type certificates, but it is not meant to affect current airplanes in production. We did not change this final rule based on this comment.

Request To Revise Economic Analysis

Boeing commented that if the proposed rule applies to all COG installations, the economic analysis was not accurate, since it assumes there will be little cost impact. We disagree. As previously noted, all COG installations are affected by this final rule, but the vast majority of installations will not require any design changes because they are located where it would be immediately obvious if anyone attempted to access them. In those cases, the installation complies with the rule because of its location and would not require any physical changes to the generator or method of installation. In addition, because this rule applies to new applications for type certification, any design changes to existing approaches that might be needed can readily be accommodated during the design process. Therefore, the economic assessment is valid. We did not change this final rule based on this comment.

Boeing also commented that if the requirements of this rule were imposed as a result of § 21.101, the cost ramifications would be more significant and that this was not accounted for in the economic evaluation. We disagree. It is true that these requirements could be imposed on significant product-level design changes. However, as noted in the "Benefits" discussion of the Type Certification Procedures for Changed Products (65 FR 36244, June 7, 2000) final rule, compliance is required with all later regulations where such compliance will materially contribute to the level of safety.

The provisions of § 21.101 do not require compliance with later requirements under specified

circumstances. In particular, where the costs involved would not be commensurate with the safety benefit achieved. Therefore, the incremental costs for changed products have already been justified by the benefits and are not attributable to this final rule. Accordingly, no change was made to this final rule as a result of this comment.

Comments on Design Considerations

An individual commented on the detailed technical merits any such system should have, as well as the processes necessary to ensure such systems can be maintained and produced. We agree that most of the comments are worthwhile design considerations, but they are beyond the scope of this rulemaking effort, which defines a minimum performance standard for COG installations. The commenter also addressed the economics of product development and marketing, which is also beyond the scope of the notice. We did not change this final rule based on the individual's comments.

Request To Maintain Paragraph Numbering

Boeing suggested that the current paragraph numbering be maintained in the CFR, such that § 25.795(d) is retained as "exceptions." Boeing suggested this would assist future applicants administratively, since the amendment level would not affect which paragraph contained a requirement. We partially agree. While we understand the reason for the comment, an applicant must always specify the certification basis when applying for a design change, so the paragraph numbering should not be an issue. Furthermore, for consistency with existing regulations, a paragraph covering exceptions should come after the substantive requirements of the section. We did not change this final rule based on this comment.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule adopts new standards for future type certificate applications pertaining to COGs installed on transport category airplanes. The new standards are intended to eliminate potential security vulnerabilities. Consequently, the primary benefit of this rule is that air carriers may continue to provide supplemental oxygen to individuals in lavatories during emergencies while ensuring that individuals in lavatories cannot tamper with the supplemental oxygen system.

The rule will affect future certifications, but as the newest certificated airplanes are in compliance with this final rule, these costs are expected to be minimal. The Boeing Model 787 and the Airbus A350 established an acceptable design, or received type certification between 3 and 5 years ago (hence predating this rule). The FAA expects that these systems can be incorporated into future type certificated airplanes at a minimal cost.

Secondly, the "newer" oxygen systems (such as those on the Boeing Model 787 and the Airbus A350) are cost efficient in comparison to the more traditional COGs.[2] The "newer" systems weigh less and deliver oxygen more effectively than the traditional COGs. The lesser weight of the materials used to construct the newer systems, combined with a reduction in the amount of oxygen required per passenger, translates into fuel cost savings over an airplane's lifespan.

The design standards for secure oxygen systems apply to future transport category airplane type certificates only. Airplanes currently in production, or already in the existing fleet, are excluded from this rule. Thus, there are no costs to the existing fleet or airplanes in production.

For these reasons this final rule is expected to have a minimal impact with positive net benefits, and a regulatory evaluation was not prepared. The FAA has therefore determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the

[2] *http://www.businesswire.com/news/home/20050518005123/en/Boeing-Selects-Aerospaces-Pulse-Oxygen-System-Outfit.*

factual basis for this determination, and the reasoning should be clear.

The Small Business Administration (SBA) small-entity size standard for aircraft manufacturers is 1,500 employees or less. No U.S. manufacturers of transport category airplanes are small entities; thus, this final rule will not affect small entities, and a regulatory flexibility analysis was not prepared.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it would improve a safety objective and therefore is not considered an unnecessary obstacle to international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the states, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

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

■ 2. Amend § 25.795 by redesignating paragraphs (d) and (e) as (e) and (f) respectively, and by adding a new paragraph (d) to read as follows:

§ 25.795 Security considerations.

* * * * *

(d) Each chemical oxygen generator or its installation must be designed to be secure from deliberate manipulation by one of the following:

(1) By providing effective resistance to tampering,

(2) By providing an effective combination of resistance to tampering and active tamper-evident features,

(3) By installation in a location or manner whereby any attempt to access the generator would be immediately obvious, or

(4) By a combination of approaches specified in paragraphs (d)(1), (d)(2) and (d)(3) of this section that the Administrator finds provides a secure installation.

* * * * *

■ 3. Amend § 25.1450 by adding a new paragraph (b)(3) to read as follows:

§ 25.1450 Chemical oxygen generators.

* * * * *

(b) * * *

(3) Except as provided in SFAR 109, each chemical oxygen generator installation must meet the requirements of § 25.795(d).

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on February 19, 2014.

Michael P. Huerta,

Administrator.

[FR Doc. 2014–05291 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0872; Directorate Identifier 2013–SW–012–AD; Amendment 39–17784; AD 2014–05–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) (Airbus Helicopters)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Model AS332C, AS332L, AS332L1, AS332L2, EC225LP, and SA330J helicopters with a certain tail rotor control turnbuckle (turnbuckle) installed. This AD requires inspecting the turnbuckles for corrosion or a crack, and depending on the results, either replacing the turnbuckle or treating the turnbuckle for corrosion. This AD was prompted by a report that a turnbuckle had failed because of corrosion. The actions of this AD are intended to detect corrosion or a crack on a turnbuckle and prevent the failure of a turnbuckle, loss of control of the tail rotor and subsequent loss of control of the helicopter.

DATES: This AD is effective April 15, 2014.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of April 15, 2014.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On October 24, 2013, at 78 FR 63429, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Eurocopter France (now Airbus Helicopters) Model AS332C, AS332L, AS332L1, AS332L2, EC225LP, and SA330J helicopters with a turnbuckle, part number (P/N) 330A27–5031–20, installed. The NPRM proposed to require inspecting the turnbuckles for corrosion or a crack, and depending on the results, either replacing the turnbuckle or treating the turnbuckle for corrosion. The proposed requirements were intended to detect corrosion or a crack on a turnbuckle and prevent the failure of a turnbuckle, loss of control of the tail rotor and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2013–0081, dated March 26, 2013, issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA published AD No. 2013–0081 to correct an unsafe condition for Eurocopter Model SA330J, AS332C, AS332C1, AS332L, AS332L1, AS332L2, EC225LP helicopters equipped with tail rotor control turnbuckles, part number 330A27–5031–20. EASA advises that one of the two turnbuckles installed on the tail rotor's yaw flight control cables failed on a helicopter because of corrosion. The subsequent investigation revealed a lack of Mastinox sealant coating between both sides of the turnbuckle's internal tappings and the interface screws of the end-fitting components of the yaw flight control cables. To address this condition, EASA issued AD No. 2013–0081, which requires repetitive inspections of each turnbuckle and, depending on the results, either replacing the turnbuckle or treating the turnbuckle for corrosion. EASA revised its AD and issued AD No. 2013–0081R1, dated June 20, 2013, to clarify some of the requirements.

Since we issued the NPRM, Eurocopter France changed its name to Airbus Helicopters. This AD reflects that change and updates the contact information to obtain service documentation.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (78 FR 63429, October 24, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type designs and that air safety and the public interest require adopting the AD requirements as proposed except for the minor change previously described. This change is consistent with the intent of the proposals in the NPRM (78 FR 63429, October 24, 2013) and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the EASA AD

The EASA AD applies to Eurocopter Model AS332C1 helicopters. This AD does not because Model AS332C1 helicopters are not type certificated in the United States.

Related Service Information

On March 14, 2013, Eurocopter issued Alert Service Bulletin (ASB) No. EC225–05A031 for Model No. EC225LP helicopters; ASB No. AS332–05.00.95 for Model AS332C, AS332C1, AS332L, AS332L1 and AS332L2 and for military Model AS332B, AS332B1, AS332F1, AS332M and AS332M1 helicopters; and ASB No. SA330–05.98 for Model SA330J and military Model SA330Ba, SA330Ca, SA330Ea, SA330H, SA330L, SA330Jm, SA330S1 and SA330Sm helicopters. Eurocopter reports that a tail rotor control turnbuckle ruptured because of corrosion. The damage was discovered during a flight-control check after the main gearbox was replaced. An investigation revealed that Mastinox sealant was missing between the turnbuckle tappings and end-fittings and led to the formation of galvanic corrosion. To prevent a turnbuckle from splitting, Eurocopter called for checking all tail rotor control turnbuckles for cracks and corrosion every 12 months. On June 5, 2013, Eurocopter revised all of the ASBs with Revision 1 to clarify a requirement.

Costs of Compliance

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

- Inspecting the tail rotor control turnbuckles for corrosion or a crack requires 4 work-hours for a labor cost of $340. Parts cost $148 for a total cost of $488 per helicopter, $22,448 for the U.S. fleet.
- Treating the turnbuckle to prevent corrosion require 1 work-hour for a labor cost of $85. The cost of parts is minimal for a total cost of $85 per helicopter.
- Replacing the turnbuckle requires no additional labor costs because it can be done as part of the inspection. Parts cost $173 for a total cost of $173 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–05–11 Airbus Helicopters (Type Certificate Previously Held by Eurocopter France): Amendment 39–17784; Docket No. FAA–2013–0872; Directorate Identifier 2013–SW–012–AD.

(a) Applicability

This AD applies to Model AS332C, AS332L, AS332L1, AS332L2, EC225LP, and SA330J helicopters with a tail rotor control turnbuckle (turnbuckle), part number (P/N) 330A27–5031–20, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of a turnbuckle. This condition could result in loss of the tail rotor control and subsequent loss of helicopter control.

(c) Effective Date

This AD becomes effective April 15, 2014.

(d) Compliance

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

(e) Required Actions

(1) For helicopters delivered before March 1, 2013, within 110 hours time-in-service (TIS) or 3 months, whichever occurs first, and for helicopters delivered on or after March 1, 2013, within 12 months, and thereafter for all helicopters at intervals not

to exceed 12 months, using a light source visually inspect the tappings, middle hole, and external surface of each turnbuckle for corrosion or a crack. Indications of corrosion include dirt, a bulge, faded paint, a powdery deposit, or a pit that is white or red in color.

(i) If there is corrosion or a crack on the tappings or middle hole of the internal surface of a turnbuckle, replace the turnbuckle before further flight.

(ii) If there is a crack on the external surface of a turnbuckle, replace the turnbuckle before further flight.

(iii) If there is corrosion on the external surface of the turnbuckle, remove the corrosion, recondition the surface, and measure the corrosion depth in accordance with paragraph 3.B.2.b.2 of Eurocopter Alert Service Bulletin (ASB) No. EC225–05A031, ASB No. AS332–05.00.95, or ASB No. SA330–05.98, all Revision 1, and all dated June 5, 2013, as applicable to your model helicopter, except that you are not required to interpret the results per ASB paragraph 1.E.2.

(A) If the measured corrosion depth is greater than 0.3 mm, replace the turnbuckle before further flight.

(B) If the measured corrosion depth is 0.3 mm or less, do the following:

(*1*) Before further flight, treat the turnbuckle for corrosion in accordance with paragraph 3.B.2.c of ASB No. EC225–05A031, ASB No. AS332–05.00.95, or ASB No. SA330–05.98, all Revision 1, and all dated June 5, 2013, as applicable to your model helicopter.

(*2*) Within 6 months from when the turnbuckle is treated for corrosion, replace the turnbuckle.

(2) After installation of a turnbuckle, P/N 330A27–5031–20, with greater than 0 hours TIS, before next flight accomplish the actions of paragraph (e)(1) of this AD.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

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

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

(h) Additional Information

The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2013–0081, dated March 26, 2013 and EASA AD No. 2013–0081R1, dated June 20, 2013. You may view the EASA ADs on the Internet at *http://www.regulations.gov* in Docket No. FAA 2013–0872.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control.

(j) Material Incorporated by Reference

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

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

(i) Eurocopter Alert Service Bulletin No. EC225–05A031, Revision 1, dated June 5, 2013.

(ii) Eurocopter Alert Service Bulletin No. AS332–05.00.95, Revision 1, dated June 5, 2013.

(iii) Eurocopter Alert Service Bulletin No. SA330–05.98, Revision 1, dated June 5, 2013.

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

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on February 20, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–04695 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0826; Directorate Identifier 2011–SW–046–AD; Amendment 39–17788; AD 2014–05–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) (Airbus Helicopters)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Model AS332C, AS332L, AS332L1, AS332L2, and SA330J helicopters. This AD prohibits use of the hydraulic hoist in helicopters equipped with certain parts and configurations until a hoist beam lower fitting protector is installed. This AD was prompted by a report that the hoist cable jammed during a rescue at sea. The actions of this AD are intended to prevent the hoist cable from jamming and subsequent cable failure, which could result in injury and damage to the helicopter.

DATES: This AD is effective April 15, 2014.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of April 15, 2014.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On September 26, 2013, at 78 FR 59306, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Eurocopter France

(Eurocopter) Model AS332C, AS332L, AS332 L1, and AS332 L2 helicopters with a hoist beam, Part Number (P/N) 330A87–2345–00, –01, –02, –03, –04, –05, or –06, installed with a single or double hoist plate; and Eurocopter Model SA330J helicopters with a hoist beam, P/N 330A87–2345–00, –01, –02, –03, –04, –05, or –06, installed with a single hoist plate. The NPRM proposed to prohibit use of the hydraulic hoist in helicopters equipped with certain parts and configurations until a hoist beam lower fitting protector was installed. The proposed requirements were intended to prevent the hoist cable from jamming and subsequent cable failure, which could result in injury and damage to the helicopter.

The NPRM was prompted by AD 2009–0271R1, dated July 8, 2011, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Eurocopter Model AS332C, AS332C1, AS332L1, AS332L2 and SA330J helicopters with certain hoist beams installed. EASA advises that during a hoisting operation, a hydraulic hoist cable jammed against the base of the supporting strut of a dual hoist tray installation. According to EASA, the load was transferred to the back-up electrical hoist and safely brought on board. However, the jamming of the hydraulic hoist cable against the strut damaged the back-up electrical hoist power supply harness, which is routed through the area, resulting in a short circuit that fused and ruptured the cable. EASA reports that this condition, if not corrected, could lead to further incidents of hoist cable jamming and subsequent cable failure, which could result in personal injuries and damage to the helicopter.

Since we issued the NPRM, Eurocopter France has changed its name to Airbus Helicopters. This AD reflects that change and updates the contact information to obtain service documentation. We also corrected an error in the date of issue for Eurocopter Alert Service Bulletin No. 25.39 in the Required Actions paragraph and Differences section of this AD to reflect the correct date of July 6, 2011. We have corrected a math error in the total cost per helicopter for installation of the hoist beam lower fitting protector and short footstep with lower side protector for certain AS332 helicopters in the Cost section. Finally, we have corrected our Joint Aircraft Service Component Code in the Subject paragraph of this AD to 2500, Cabin Equipment/Furnishings.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (78 FR 59306, September 26, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except for the minor changes previously described. These changes are consistent with the intent of the proposals in the NPRM (78 FR 59306, September 26, 2013) and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the EASA AD

Our AD differs from the EASA AD as follows:

The EASA AD requires certain actions before the next flight, while we require the same actions before the next hoisting operation.

The EASA AD sets calendar dates for compliance that have since passed, while we set compliance based on hours time-in-service.

The EASA AD misidentifies the Eurocopter SA330J service bulletin number and paragraph number in its required actions for Model SA330J helicopters. This AD requires compliance with paragraph 2.B.4 of Eurocopter Emergency Alert Service Bulletin No. 25.39, Revision 3, dated July 6, 2011.

Related Service Information

Eurocopter issued one Emergency Alert Service Bulletin (EASB), Revision 3, dated July 6, 2011, with three different numbers. EASB No. 25.02.08 is for civil and military Model AS332-series helicopters; EASB No. 25.01.29 is for military Model AS532-series helicopters; and EASB No. 25.39 is for civil and military Model SA330-series helicopters. The EASB originally provided instructions to prevent the main hydraulic hoist cable from becoming jammed and damaged in the fixed fitting of the hoist beam lower fitting. The revisions add further instructions and expand the effectivity to more helicopters and helicopter equipment configurations. The revisions also extend some compliance deadlines, and revise some instructions to account for improved installation procedures. After further investigation, the most recent revisions remove some helicopter models from the list of applicable helicopters.

Costs of Compliance

We estimate that this AD affects 20 helicopters of U.S. Registry and that work hours average $85 an hour. Based on these estimates, we expect the following costs:

- The cost for installing and removing placards is minimal.
- Disabling the hoist pyrotechnic shear function requires 1 work-hour. No parts are needed for a cost of $85 per helicopter, $1,700 for the U.S. fleet.
- Installation of the hoist beam lower fitting protector for Model AS332 helicopters without a right hand (RH) sliding door and without a short footstep requires 6 work-hours for a labor cost of $510 per helicopter. Parts cost $4,760 for a total cost of $5,270 per helicopter.
- Installation of the hoist beam lower fitting protector and short footstep with lower side protector for Model AS332 helicopters without a RH sliding door and with a short footstep requires 12 work-hours for a labor cost of $1020 per helicopter. Parts cost $26,891 for a total cost of $27,911 per helicopter.
- Installation of the hoist beam protector for Model AS332 helicopters with a RH sliding door requires 3 work-hours for a labor cost of $255 per helicopter. Parts cost $20,858 for a total cost of $21,113 per helicopter.
- Installation of the hoist beam protector for Model SA330J helicopters requires 3 work-hours for a labor cost of $255 per helicopter. Parts cost $4,774 for a total cost of $5,029 per helicopter.
- Enabling the hoist pyrotechnic shear function requires 1 work-hour. No parts are needed for a cost of $85 per helicopter.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on helicopters identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–05–15 Airbus Helicopters (Type Certificate Previously Held by Eurocopter France): Amendment 39–17788; Docket No. FAA–2013–0826; Directorate Identifier 2011–SW–046–AD.

(a) Applicability

(1) This AD applies to the following helicopters, certificated in any category:

(i) Model AS332C, AS332L, AS332 L1, and AS332 L2 helicopters with a hoist beam, Part Number (P/N) 330A87–2345–00, –01, –02, –03, –04, –05, or –06, installed with a single or double hoist plate; and

(ii) Model SA330J helicopters with a hoist beam, P/N 330A87–2345–00, –01, –02, –03, –04, –05, or –06, installed with a single hoist plate.

(b) Unsafe Condition

The unsafe condition is defined as hoist cable jamming and subsequent cable failure, which could result in injuries or damage to the helicopter.

(c) Effective Date

This AD becomes effective April 15, 2014.

(d) Compliance

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

(e) Required Actions

(1) Before the next hoist operation:

(i) For all helicopters, install a placard in full view of the hoist operator that states: IN CASE OF CABLE JAM AGAINST STRUT DO NOT ATTEMPT TO RAISE OR LOWER LOAD.

(ii) For helicopters with a hoist control electrical harness routed at the base of the hoist supporting strut:

(A) Disable the hoist pyrotechnic shear function.

(B) Install a placard on the instrument panel in full view of the flight crew that states: HOIST PYROTECHNIC SHEAR FUNCTION DISABLED.

(C) Install a placard in full view of the hoist operator that states: HOIST PYROTECHNIC SHEAR FUNCTION DISABLED. IN CASE OF NECESSITY, CUT THE HOIST CABLE WITH THE SHEARS LOCATED IN THE CABIN.

(iii) For helicopters listed in paragraph (a)(1)(i) of this AD with a tray-mounted double hoist installed with the back-up electrical hoist power supply harness routed at the base of the hoist supporting strut, do one of the following:

(A) Install a hoist beam lower fitting protector in accordance with the Accomplishment Instructions, paragraph 2.B.2.b of Eurocopter Emergency Alert Service Bulletin No. 25.02.08, Revision 3, dated July 6, 2011 (EASB No. 25.02.08), and if a short footstep, P/N 332P21–9000–00 or 332P21–2052–01, is installed, also install the short footstep with lower side protector in accordance with the Accomplishment Instructions, paragraph 2.B.2.c.2, of EASB No. 25.02.08; or

(B) Install two placards, one in full view of the flight crew and one in full view of the hoist operator, that state: IN-FLIGHT OPERATION OF THE HOIST IS PROHIBITED.

(2) Within 60 hours time-in-service:

(i) For helicopters listed in paragraph (a)(1)(i) of this AD without a tray-mounted double hoist installed with the back-up electrical hoist power supply harness routed at the base of the hoist supporting strut and without a right hand sliding door, P/N 332A22–1165–01, installed, do one of the following:

(A) Install a hoist beam lower fitting protecter in accordance with the Accomplishment Instructions, paragraph 2.B.2.b, of EASB No. 25.02.08 and if a short footstep, P/N 332P21–9000–00 or 332P21–2052–01, is installed, also install the short footstep with lower side protector in accordance with the Accomplishment Instructions, paragraph 2.B.2.c.2, of EASB No. 25.02.08; or

(B) Install two placards, one in full view of the flight crew and one in full view of the hoist operator, that state: IN-FLIGHT OPERATION OF THE HOIST IS PROHIBITED.

(ii) For helicopters listed in paragraph (a)(1)(i) of this AD with a right hand sliding door, P/N 332A22–1165–01, installed, do one of the following:

(A) Install a hoist beam lower fitting protector in accordance with the Accomplishment Instructions, paragraph 2.B.5, of EASB No. 25.02.08; or

(B) Install two placards, one in full view of the flight crew and one in full view of the hoist operator, that state: IN-FLIGHT OPERATION OF THE HOIST IS PROHIBITED.

(iii) For Model SA330J helicopters, do one of the following:

(A) Install a hoist beam lower fitting protector in accordance with the Accomplishment Instructions, paragraph 2.B.4, of Eurocopter Emergency Alert Service Bulletin No. 25.39, Revision 3, dated July 6, 2011; or

(B) Install two placards, one in full view of the flight crew and one in full view of the hoist operator, that state: IN-FLIGHT OPERATION OF THE HOIST IS PROHIBITED.

(3) For any helicopter that has been modified per paragraph (e)(1)(iii)(A), (e)(2)(i)(A), (e)(2)(ii)(A), or (e)(2)(iii)(A) of this AD, do the following before the next hoist operation:

(i) Re-establish the hoist pyrotechnic shear function if disabled per paragraph (e)(1)(ii)(A) of this AD.

(ii) Remove any placards if installed as required by paragraph (e)(1)(i), (e)(1)(ii)(B), (e)(1)(ii)(C), (e)(1)(iii)(B), (e)(2)(i)(B), (e)(2)(ii)(B), or (e)(2)(iii)(B) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

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

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or

certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2009–0271R1, dated July 8, 2011. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2013–0826.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

(i) Material Incorporated by Reference

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

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

(i) Eurocopter Emergency Alert Service Bulletin No. 25.02.08, Revision 3, dated July 6, 2011.

(ii) Eurocopter Emergency Alert Service Bulletin No. 25.39, Revision 3, dated July 6, 2011.

Note 1 to paragraph (i)(2): Eurocopter Emergency Alert Service Bulletin (EASB) No. 25.02.08 and Eurocopter EASB No. 25.39, both Revision 3, and both dated July 6, 2011, are co-published as one document along with Eurocopter EASB No. 25.01.29, Revision 3, dated July 6, 2011, which is not incorporated by reference in this AD.

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

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on February 26, 2014.

Bruce E. Cain,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–04724 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0573; Directorate Identifier 2012–SW–042–AD; Amendment 39–17781; AD 2014–05–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) (Airbus Helicopters)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Helicopters Model AS332L1 helicopters. This AD requires replacing the rivets on the left-hand (LH) and right-hand (RH) Y350 longitudinal beams (longitudinal beams Y350). This AD was prompted by a report that non-conforming rivets had been installed on an AS332 helicopter during a production modification. The actions of this AD are intended to prevent failure of the longitudinal beams Y350 and subsequent loss of control of the helicopter.

DATES: This AD is effective April 15, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of April 15, 2014.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On July 3, 2013 at 78 FR 40072, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Eurocopter (now Airbus Helicopters) Model AS332C1 and AS332L1 helicopters. The NPRM proposed to require replacing the non-conforming 3.2 mm rivets, part-number (P/N) 212 15DC 3200J, on the longitudinal beams Y350 with airworthy 4.8 mm rivets, P/N 212 15DC 4800J. The proposed requirements were intended to prevent failure of the longitudinal beams Y350 and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2012–0046–E, dated March 21, 2012 (EAD 2012–0046–E), issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Model AS332C1 and AS332L1 helicopters. EASA advises that an AS332 helicopter was found on the production line with non-conforming rivets installed on the RH and LH longitudinal beams Y350 of the bottom structure of the fuselage, between sections X4780 and X5295. According to EASA, the investigation revealed that a limited number of helicopters were documented as receiving a production modification requiring the replacement of certain 3.2 mm rivets with 4.8 mm rivets, but the actual replacement of the rivets had not been performed. EASA states that this condition leads to significant reduction in the safety margins during sling operations and may cause failure of the web/flange assembly connections of the longitudinal beams Y350, possibly resulting in loss of control of the helicopter. For these reasons, EASA issued EAD 2012–0046–E, which, pending inspection of the helicopter beams Y350 and replacement of the affected rivets, prohibits sling operations or limits the 3-ton sling to external loads of 2.28 tons or less.

Since the NPRM was published, we have determined that the applicability requirements of the proposed AD should not apply to Model AS332C1 helicopters, because that model is not type certificated in the United States. We have removed that model and its corresponding serial numbers from this AD. Also, Eurocopter France has changed its name to Airbus Helicopters. This AD reflects that change and updates to contact information to obtain service information.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 40072, July 3, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed, except that we have removed Eurocopter Model AS332C1 helicopters from the Applicability paragraph and changed Eurocopter France to Airbus Helicopters. These changes are consistent with the intent of the proposals in the NPRM (78 FR 40072, July 3, 2013) and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the EASA AD

The EASA AD requires limiting the use of the 3-ton sling, inspecting the longitudinal beams Y350 for loose or missing rivets, black marks around the rivets, and cracks, and, depending on the accumulated sling operation cycles, replacing the rivets within a period of up to 24 months. This AD does not require the inspections as it would require replacing the rivets within 10 hours time-in-service, regardless of accumulated sling operation cycles. The EASA AD applies to Model AS332C1 helicopters, and this AD does not because that model is not type certificated in the United States.

Related Service Information

We reviewed Eurocopter Emergency Alert Service Bulletin No. 01.00.81 Revision 0, dated March 19, 2012 (EASB 01.00.81) for Model AS332 helicopters. The EASB describes procedures for temporarily prohibiting sling operations or limiting the use of the 3-ton sling to 2.28 tons until the 3.2 mm diameter rivets are replaced with 4.8 mm diameter rivets.

We have subsequently reviewed Eurocopter EASB 01.00.81 Revision 1, dated July 6, 2012 (EASB 01.00.81 Revision 1). EASB 01.00.81 Revision 1 deletes from the applicability of the EASB helicopters with Modification (MOD) 07 26082 installed. MOD 07 26082 provides for installation of the correct 4.8 mm diameter rivets on Eurocopter's production line.

Costs of Compliance

We estimate that this AD will affect 1 helicopter of U.S. Registry. We estimate that operators will incur the following costs in order to comply with this AD. Modifying the longitudinal beams Y350 with 4.8 mm rivets requires about 24 work-hours at an average labor rate of $85 per hour and required parts cost about $110, for a total cost per helicopter of $2,150. Thus, the total cost to U.S. operators to comply with this AD is about $2,150.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–05–08 Airbus Helicopters (Type Certificate Previously Held by Eurocopter France): Amendment 39–17781; Docket No. FAA–2013–0573; Directorate Identifier 2012–SW–042–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS332L1 helicopters with the following serial numbers, certificated in any category: 2635, 2641, 2644, 9007, 9008, and 9009.

(b) Unsafe Condition

This AD defines the unsafe condition as non-conforming rivets installed on the left-hand (LH) and right-hand (RH) Y350 longitudinal beams (longitudinal beams Y350) of the bottom structure. This condition could result in failure of the web/flange assembly connections of the longitudinal beams Y350 and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective April 15, 2014.

(d) Compliance

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

(e) Required Actions

Within 10 hours time-in-service, replace the 3.2 mm rivets, part-number (P/N) 21215DC3200J, of the RH and LH longitudinal beams Y350 of the bottom structure with 4.8 mm rivets, P/N 21215DC4800J, as shown in Figures 2 and 3 of Eurocopter Emergency Alert Service Bulletin No. 01.00.81, Revision 0, dated March 19, 2012.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov*.

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) Emergency AD No. 2012–0046–E, dated March 21, 2012. You may view the EASA AD on the Internet at *www.regulations.gov* in Docket No. FAA–2013–0573.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5314: Fuselage Main, Keel.

(i) Material Incorporated by Reference

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

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

(i) Eurocopter Emergency Alert Service Bulletin No. 01.00.81, Revision 0, dated March 19, 2012.

Note 1 to paragraph (i)(2): Eurocopter Emergency Alert Service Bulletin No. 01.00.81, Revision 0, dated March 19, 2012, is co-published as one document along with Eurocopter Emergency Alert Service Bulletin No. 01.00.46, Revision 0, dated March 19, 2012, which is not incorporated by reference in this AD.

(ii) Reserved.

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

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on February 26, 2014.

Bruce E. Cain,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–04697 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0477; Directorate Identifier 2011–SW–015–AD; Amendment 39–17780; AD 2014–05–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) (Airbus Helicopters)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2010–11–51 for Eurocopter France (Eurocopter) Model AS350B, BA, B1, B2, C, D, and D1 helicopters and Model AS355E, F, F1, F2, and N helicopters with certain part-numbered tail gearbox (TGB) control levers installed. AD 2010–11–51 required repetitive visual inspections of the TGB control lever for a crack and replacing a cracked TGB control lever with an airworthy TGB control lever. This new AD retains the requirements of AD 2010–11–51 and also requires inspecting other areas of the TGB control lever not previously inspected and at additional inspection intervals. This AD was prompted by several reports of cracking in a TGB control lever. The actions of this AD are intended to prevent failure of the TGB control lever, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: This AD is effective April 15, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 15, 2014.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, TX 76137, telephone 817–222–5110, email *robert.grant@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2010–11–51, Amendment 39–16396 (75 FR 50874, August 18, 2010). AD 2010–11–51 applied to Eurocopter Model AS350B, BA, B1, B2, C, D, and D1 helicopters and Model AS355E, F, F1, F2, and N helicopters with certain part-numbered tail gearbox (TGB) control levers installed. The NPRM published in the **Federal Register** on June 17, 2013 (78 FR 36129). The NPRM proposed to retain the requirements in AD 2010–11–51 to perform repetitive visual inspections in a certain area on each TGB control lever not marked with an "X" and to replace a cracked part. Also, the NPRM proposed to require inspecting another area of each TGB control lever at additional intervals. The NPRM also proposed replacing each TGB control lever with a reworked TGB control lever marked with an "X" near the P/N or with a TGB control lever with a P/N not listed in the applicability of the AD. The proposed requirements were intended to prevent failure of the

TGB control lever, loss of tail rotor control, and subsequent loss of control of the helicopter.

The NPRM was prompted by Emergency AD No. 2011–0038–E, dated March 4, 2011 (AD No. 2011–0038–E), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for the Eurocopter Model AS350B, BA, BB, B1, B2, and D, and AS355E, F, F1, F2, and N helicopters. Emergency AD No. 2011–0038–E superseded EASA Emergency AD No. 2010–0082–E, dated April 27, 2010 (AD No. 2010–0082–E). EASA advises that since issuing its Emergency AD No. 2010–0082–E, Eurocopter found additional cracks opposite the required inspection area on the affected control levers. EASA Emergency AD No. 2011–0038–E retains the requirements of EASA Emergency AD No. 2010–082–E and adds repetitive inspections for the area opposite the control levers.

Since we issued the NPRM, Eurocopter France changed its name to Airbus Helicopters. This AD reflects that change and updates the contact information to obtain service documentation.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 36129, June 17, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except for the name change previously described and correcting the date referenced for Revision 2 of the Eurocopter Emergency Alert Service Bulletin (EASB). These changes are consistent with the intent of the proposals in the NPRM (78 FR 36129, June 17, 2013) and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the EASA AD

This AD differs from EASA Emergency AD No. 2011–0038–E as follows:

- We include the Model AS350C and AS350D1 helicopters that may contain the affected TGB control lever. We do not include the Model AS350BB helicopter because it is not type-certificated in the United States.
- We do not require an "after last flight"of the day inspection.
- We do not allow a pilot to inspect for a crack.
- We do not require reworking noninstalled control levers.
- We do not include a calendar compliance time for reworking the TGB control lever if there is not a crack.
- We do not require you to contact Eurocopter (now Airbus Helicopters) if a crack is found during any inspection.

Related Service Information

Eurocopter issued one EASB, Revision 2, dated March 1, 2011, with four different numbers. EASB No. 05.00.62 is for Model AS350 helicopters; EASB No. 05.00.57 is for Model AS355 helicopters; EASB No. 05.00.38 is for military Model AS550 helicopters; and EASB No. 05.00.35 is for military Model AS555 helicopters. The military models are not type-certificated in the United States. The EASB specifies visually inspecting the TGB control lever for a crack at the last flight of each day, without exceeding 10 flying hours between inspections. The EASB also specifies a rework procedure for affected TGB control levers, to be done within 660 flying hours and no later than June 30, 2011, indicated by marking the control lever with a letter "X." EASA classified this EASB as mandatory and issued AD No. 2011–0038–E to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD will affect 791 helicopters of U.S. registry. We estimate that operators may incur the following costs in order to comply with this AD. The inspections for a crack in the TGB control lever will take a minimal amount of time. Replacing a control lever will take about 3 work hours at an average labor rate of $85 per work hour. Required parts will cost about $2,103 per helicopter. Based on these figures, we estimate the total cost of the AD on U.S. operators to be $2,358 per helicopter to replace the control lever.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2010–11–51, Amendment 39–16396 (75 FR 50874, August 18, 2010), and adding the following new AD:

2014–05–07 Airbus Helicopters (Type Certificate Previously Held by Eurocopter France): Amendment 39–17780; FAA–2013–0477; Directorate Identifier 2011–SW–015–AD.

(a) Applicability

This AD applies to Model AS350B, BA, B1, B2, C, D, and D1 helicopters and Model AS355E, F, F1, F2, and N helicopters, with a tail gearbox (TGB) control lever, part number (P/N) 350A33–1058–00, P/N 350A33–1058–01, P/N 350A33–1058–02, or P/N 350A33–1058–03, both with and without an "X" marked near the P/N, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the TGB control lever. This condition could result in failure of the TGB control lever, loss of tail rotor control, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 2010–11–51, Amendment 39–16396 (75 FR 50874, August 18, 2010).

(d) Effective Date

This AD becomes effective April 15, 2014.

(e) Compliance

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

(f) Required Actions

(1) For helicopters with a lever not marked with an "X" near the P/N, within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 10 hours TIS, using a mirror and appropriate light source, visually inspect the TGB control lever for a crack as shown in area "A" of Figure 2 of Eurocopter Emergency Alert Service Bulletin No. 05.00.62, Revision 2, dated March 1, 2011 (EASB No. 05.00.62), for Model AS350 helicopters, and Eurocopter Emergency Alert Service Bulletin No. 05.00.57, Revision 2, dated March 1, 2011 (EASB No. 05.00.57), for Model AS355 helicopters. If there is a crack, before further flight, replace each cracked TGB control lever with a TGB control lever with a P/N not listed in paragraph (a) of this AD.

(2) For Model AS355N helicopters, within 110 hours TIS, or if the helicopter has reached 100 or more hours TIS, within the next 10 hours TIS, and thereafter at intervals not to exceed 110 hours TIS, using a mirror and appropriate light source, inspect each TGB control lever for a crack as shown in area "C" of Figure 8 of EASB No. 05.00.62 or EASB No. 05.00.57, as applicable to your model helicopter.

(3) Within 660 hours TIS, replace each TGB control lever with a reworked TGB control lever marked with an "X" near the P/N or with a TGB control lever with a P/N not listed in paragraph (a) of this AD.

(4) For all model helicopters except Model AS355N, within 660 hours TIS, or if the helicopter has reached 605 or more hours TIS within the next 55 hours TIS, and thereafter at intervals not to exceed 660 hours TIS, using a mirror and appropriate light source, inspect each TGB control lever for a crack as shown in area "C" of Figure 8 of EASB No. 05.00.62 or EASB No. 05.00.57, as applicable to your model helicopter.

(5) If there is a crack, before further flight, replace each cracked TGB control lever with a TGB control lever with a P/N not listed in paragraph (a) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, TX 76137, telephone (817) 222–5110, email *robert.grant@faa.gov.*

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

(h) Related Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) Emergency AD No. 2011–0038–E, dated March 4, 2011, and superseded EASA Emergency AD No. 2010–0082–E, dated April 27, 2010. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2013–0477.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6720 Tail Rotor Control System.

(j) Material Incorporated by Reference

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

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

(i) Eurocopter Emergency Alert Service Bulletin (EASB), No. 05.00.62, Revision 2, dated March 1, 2011.

(ii) Eurocopter EASB No. 05.00.57, Revision 2, dated March 1, 2011.

Note 1 to paragraph (j)(2): Eurocopter EASB No. 05.00.62, Revision 2, dated March 1, 2011, and Eurocopter EASB No. 05.00.57, Revision 2, dated March 1, 2011, are co-published as one document along with Eurocopter EASB No. 05.00.38, Revision 2, dated March 1, 2011, and Eurocopter EASB No. 05.00.35, Revision 2, dated March 1, 2011, which are not incorporated by reference in this AD.

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

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on February 26, 2014.

Bruce E. Cain,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–04729 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0798; Directorate Identifier 2013–NM–087–AD; Amendment 39–17796; AD 2014–05–23]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes. This AD was prompted by multiple reports of erratic electrical status indications on the push button annunciators and the engine instrument and crew alerting system. Certain of those reported incidents resulted in the airplane experiencing a momentary loss of electrical power and loss of flight displays. This AD requires modification of the direct current power centers. We are issuing this AD to prevent loss of electrical power, which could result in the loss of flight displays and reduced controllability of the airplane.

DATES: This AD becomes effective April 15, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 15, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0798;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes. The NPRM published in the **Federal Register** on September 25, 2013 (78 FR 58965). The NPRM was prompted by multiple reports of erratic electrical status indications on the push button annunciators and the engine instrument and crew alerting system. Certain of those reported incidents resulted in the airplane experiencing a momentary loss of electrical power and loss of flight displays. The NPRM proposed to require modification of the direct current power centers. We are issuing this AD to prevent loss of electrical power, which could result in the loss of flight displays and reduced controllability of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–05, dated February 22, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> There have been multiple in-service reports of erratic electrical status indications on the Push Button Annunciators (PBA) and the Engine Instrument & Crew Alerting System (EICAS) while on-ground and during flight. Three of those reported incidents resulted in the aeroplane experiencing momentary loss of electrical power and loss of flight displays.
>
> The investigation revealed that improper insertion of a Printed Circuit Board (PCB) in a Direct Current Power Center (DCPC) may lead to erroneous electrical status indications on the PBAs and EICAS. The erroneous indications could mislead the pilots into turning off active generators and leading to partial or complete loss of electrical power. Loss of electrical power could result in the loss of flight displays and reduced controllability of the aeroplane.
>
> Further investigation determined that the design of the existing DCPC covers does not ensure that the PCBs will remain inserted into the motherboard of the DCPC.
>
> This [TCCA] AD mandates the modification of each DCPC to ensure that properly closed covers will retain the PCBs within the motherboards.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0798-0001.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 58965, September 25, 2013) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 58965, September 25, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 58965, September 25, 2013).

Costs of Compliance

We estimate that this AD affects 92 airplanes of U.S. registry.

We also estimate that it will take about 7 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,568 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $198,996, or $2,163 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0798;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any

comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–05–23 Bombardier, Inc.: Amendment 39–17796. Docket No. FAA–2013–0798; Directorate Identifier 2013–NM–087–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 15, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes, certificated in any category, serial numbers 20003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by multiple reports of erratic electrical status indications on the push button annunciators and the engine instrument and crew alerting system. Certain of those reported incidents resulted in the airplane experiencing a momentary loss of electrical power and loss of flight displays. We are issuing this AD to prevent loss of electrical power, which could result in the loss of flight displays and reduced controllability of the airplane.

(f) Compliance

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

(g) Direct Current Power Centers (DCPC) Modification

For airplanes having serial numbers 20003 through 20405 inclusive: Within 800 flight hours after the effective date of this AD or within 24 months after the effective date of this AD, whichever occurs first, modify the left-hand DCPC, right-hand DCPC, and auxiliary DCPC, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–24–23, dated November 26, 2012.

(h) Parts Installation Limitation

As of the effective date of this AD, no person may install a DCPC having a part number specified in paragraphs (h)(1) through (h)(9) of this AD on any airplane, unless the DCPC serial number has a suffix "R" beside the serial number.

(1) 970GC02Y04.
(2) 970GC02Y05.
(3) 970GC02Y06.
(4) 975GC02Y04.
(5) 975GC02Y05.
(6) 975GC02Y06.
(7) 320GC03Y04.
(8) 320GC03Y05.
(9) 320GC03Y06.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–05, dated February 22, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0798-0001.*

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 100–24–23, dated November 26, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on February 26, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04822 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0977; Directorate Identifier 2013–NM–190–AD; Amendment 39–17795; AD 2014–05–22]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 717–200 airplanes. This AD was prompted by multiple reports of cracking in the overwing frames. This AD requires repetitive inspections for cracking in the overwing frames, and corrective actions if necessary. We are issuing this AD to detect and correct such cracking, which could result in a severed frame and might increase the loading of adjacent frames, resulting in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

DATES: This AD is effective April 15, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 15, 2014.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0977; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles ACO, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 717–200 airplanes. The NPRM published in the **Federal Register** on December 4, 2013 (78 FR 72836). The NPRM was prompted by multiple reports of cracking in the overwing frames. The NPRM proposed to require repetitive inspections for cracking in the overwing frames, and corrective actions if necessary. We are issuing this AD to detect and correct such cracking, which could result in a severed frame and might increase the loading of adjacent frames, resulting in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Boeing stated that it supports the NPRM (78 FR 72836, December 4, 2013).

Change to This Final Rule

We revised paragraph (g)(2)(i) of this final rule to clarify that an operator that has already accomplished the inspections specified in Boeing Multi Operator Message (MOM) MOM–MOM–13–0375–01B, dated May 9, 2013, has a compliance time of within 9,300 flight cycles after those inspections were accomplished to do the actions required by paragraph (g) of this final rule.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 72836, December 4, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 72836, December 4, 2013).

Costs of Compliance

We estimate that this AD affects 129 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	22 work-hours × $85 per hour = $1,870 per inspection cycle.	$0	$1,870 per inspection cycle	$241,230 per inspection cycle

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of a frame station	126 work-hours × $85 per hour = $10,710	$83,060	$93,770

In addition, for the on-condition repairs specified in this AD, we have received no definitive data that would enable us to provide cost estimates.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–05–22 The Boeing Company: Amendment 39–17795; Docket No. FAA–2013–0977; Directorate Identifier 2013–NM–190–AD.

(a) Effective Date

This AD is effective April 15, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 717–200 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by multiple reports of cracking in the overwing frames. We are issuing this AD to detect and correct such cracking, which could result in a severed frame and might increase the loading of adjacent frames, resulting in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

(f) Compliance

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

(g) Inspections and Corrective Actions

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a general visual inspection and a high frequency eddy current (HFEC) inspection for cracking of the left-side and right-side overwing frames at station 737, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013, except as required by paragraph (h)(3) of this AD. Do all applicable corrective actions before further flight. Except as required by paragraph (h)(2) of this AD, repeat the inspections thereafter at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013.

(1) For Group 1, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013: At the time specified in table 1 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013, except as provided by paragraph (h)(1) of this AD.

(2) For Group 1, Configuration 2 airplanes identified in Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013: At the applicable time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) For airplanes on which the overwing frame has not been replaced: Within 9,300 flight cycles after the inspections specified in Boeing Multi Operator Message (MOM) MOM–MOM–13–0375–01B, dated May 9, 2013, were accomplished.

(ii) For airplanes on which the overwing frame has been replaced: Within 12,000 flight cycles after replacing the frame.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013, specifies to contact Boeing for the compliance time of an inspection repetitive interval, this AD requires a compliance time approved by the FAA in accordance with the procedures specified in paragraph (j) of this AD.

(3) Where Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013, specifies to contact Boeing for repair instructions, this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for only the initial general visual inspection, HFEC inspection, and frame replacement required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Multi Operator Message MOM–MOM–13–0375–01B, dated May 9, 2013, which is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) If the service information contains steps that are labeled as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

(k) Related Information

(1) For more information about this AD, contact: Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles ACO, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference may be obtained at the addresses specified in paragraphs (l)(3) and (l)(4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington on February 26, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04841 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30945; Amdt. No. 3579]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 11, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of March 11, 2014.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on February 14, 2014.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * Effective 3 April 2014*

Mountain Village, AK, Mountain Village, RNAV (GPS) RWY 20, Amdt 1A
Cullman, AL, Cullman Rgnl-Folsom Field, RNAV (GPS) RWY 2, Amdt 1
Cullman, AL, Cullman Rgnl-Folsom Field, RNAV (GPS) RWY 20, Amdt 1
Prescott, AZ, Ernest A. Love Field, GPS RWY 12, Orig-A, CANCELED
Prescott, AZ, Ernest A. Love Field, PRESCOTT ONE, Graphic DP
Prescott, AZ, Ernest A. Love Field, RNAV (GPS) RWY 12, Orig
Prescott, AZ, Ernest A. Love Field, RNAV (GPS) RWY 21L, Amdt 2
Prescott, AZ, Ernest A. Love Field, Takeoff Minimums and Obstacle DP, Amdt 4
San Francisco, CA, San Francisco Intl, ILS OR LOC RWY 28L, ILS RWY 28L (SA CAT II), Amdt 24B
San Francisco, CA, San Francisco Intl, ILS OR LOC RWY 28R, ILS RWY 28R (CAT II), ILS RWY 28R (CAT III), ILS RWY 28R (SA CAT I), Amdt 12A
Alamosa, CO, San Luis Valley Rgnl/Bergman Field, VOR–A, Amdt 7
Alamosa, CO, San Luis Valley Rgnl/Bergman Field, VOR/DME–B, Amdt 5
Washington, DC, Washington Dulles Intl, ILS OR LOC RWY 19L, ILS RWY 19L (SA CAT II), Amdt 15C
Washington, DC, Washington Dulles Intl, ILS OR LOC/DME RWY 1C, ILS RWY 1C (SA CAT II), Amdt 2B
Miami, FL, Dade-Collier Training and Transition, ILS OR LOC RWY 9, Amdt 15A
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, Takeoff Minimums and Obstacle DP, Amdt 3A
Smith Center, KS, Smith Center Muni, RNAV (GPS) RWY 14, Orig
Smith Center, KS, Smith Center Muni, RNAV (GPS) RWY 32, Orig
Lincoln, ME, Lincoln Rgnl, VOR/DME–A, Amdt 2, CANCELED
Walker, MN, Walker Muni, RNAV (GPS) RWY 15, Orig
Walker, MN, Walker Muni, RNAV (GPS) RWY 33, Orig
Walker, MN, Walker Muni, Takeoff Minimums and Obstacle DP, Orig
Macon, MO, Macon-Fower Memorial, GPS RWY 2, Orig-A, CANCELED
Macon, MO, Macon-Fower Memorial, RNAV (GPS) RWY 2, Orig
Macon, MO, Macon-Fower Memorial, RNAV (GPS) RWY 20, Orig
Macon, MO, Macon-Fower Memorial, Takeoff Minimums and Obstacle DP, Orig
Macon, MO, Macon-Fower Memorial, VOR/DME RWY 20, Amdt 2
Artesia, NM, Artesia Muni, RNAV (GPS) RWY 12, Amdt 1
Artesia, NM, Artesia Muni, RNAV (GPS) RWY 21, Amdt 1
Artesia, NM, Artesia Muni, RNAV (GPS) RWY 30, Amdt 1
Artesia, NM, Artesia Muni, Takeoff Minimums and Obstacle DP, Orig
Rochester, NY, Greater Rochester Intl, Takeoff Minimums and Obstacle DP, Amdt 8
Lancaster, OH, Fairfield County, LOC RWY 28, Amdt 2, CANCELED
Ravenna, OH, Portage County, RNAV (GPS) RWY 9, Orig
Ravenna, OH, Portage County, RNAV (GPS) RWY 27, Amdt 1
Danville, PA, Danville, VOR–A, Orig
Perkasie, PA, Pennridge, NDB–A, Amdt 2A, CANCELED
Quakertown, PA, Quakertown, NDB RWY 29, Amdt 11, CANCELED
Brookings, SD, Brookings Rgnl, ILS OR LOC RWY 30, Orig-B, CANCELED
Brookings, SD, Brookings Rgnl, RNAV (GPS) RWY 12, Orig, CANCELED
Brookings, SD, Brookings Rgnl, RNAV (GPS) RWY 30, Orig, CANCELED
Brookings, SD, Brookings Rgnl, VOR RWY 12, Amdt 12, CANCELED
Brookings, SD, Brookings Rgnl, VOR RWY 30, Amdt 11A, CANCELED
Cleveland, TN, Hardwick Field, RNAV (GPS) RWY 3, Orig-A, CANCELED
Cleveland, TN, Hardwick Field, RNAV (GPS) RWY 21, Orig, CANCELED
Cleveland, TN, Hardwick Field, Takeoff Minimums and Obstacle DP, Amdt 1, CANCELED
Lawrenceburg, TN, Lawrenceburg-Lawrence County, RNAV (GPS) RWY 17, Orig
Lawrenceburg, TN, Lawrenceburg-Lawrence County, RNAV (GPS) RWY 35, Orig
El Paso, TX, El Paso Intl, Takeoff Minimums and Obstacle DP, Amdt 7
Odessa, TX, Odessa-Schlemeyer Field, RNAV (GPS) RWY 11, Orig-A
Spokane, WA, Spokane Intl, RNAV (GPS) Y RWY 25, Amdt 4
Spokane, WA, Spokane Intl, RNAV (RNP) Z RWY 25, Amdt 1
Baraboo, WI, Baraboo Wisconsin Dells, LOC/DME RWY 1, Amdt 1A
Milton, WV, Ona Airpark, GPS RWY 7, Orig, CANCELED
Milton, WV, Ona Airpark, RNAV (GPS)–A, Orig
Buffalo, WY, Johnson County, RNAV (GPS) RWY 31, Amdt 1
Hulett, WY, Hulett Muni, RNAV (GPS)–A, Amdt 1

** * * Effective 1 May 2014*

Joliet, IL, Joliet Rgnl, RNAV (GPS) RWY 13, Orig, CANCELED
Joliet, IL, Joliet Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4, CANCELED
Joliet, IL, Joliet Rgnl, VOR RWY 13, Amdt 12, CANCELED
Gwinner, ND, Gwinner-Roger Melroe Field, NDB RWY 34, Amdt 2, CANCELED
Tekamah, NE., Tekamah Muni, VOR RWY 33, Amdt 6, CANCELED

RESCINDED: On January 17, 2014 (79 FR 3072), the FAA published an Amendment in Docket No. 30936, Amdt No. 3571 to Part 97 of the Federal Aviation Regulations under section 97.23. The following entry for Santa Monica, CA, effective 6 February 2014 is hereby rescinded in its entirety:

Santa Monica, CA, Santa Monica Muni, VOR–A, Amdt 11

[FR Doc. 2014–04297 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30946; Amdt. No. 3580]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and

Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 11, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 11, 2014.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on February 14, 2014.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

Effective Upon Publication

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
4/3/2014	AZ	Globe	San Carlos Apache	3/1061	02/03/14	GPS RWY 27, Orig.
4/3/2014	OR	Aurora	Aurora State	3/2076	02/04/14	LOC RWY 17, Amdt 1A.
4/3/2014	OR	Aurora	Aurora State	3/2079	02/04/14	VOR/DME A, Amdt 3A.
4/3/2014	OR	Aurora	Aurora State	3/2084	02/04/14	RNAV (GPS) B, Orig-A.
4/3/2014	MA	Fitchburg	Fitchburg Muni	3/4501	02/07/14	RNAV (GPS) RWY 20, Orig-A.
4/3/2014	MA	Fitchburg	Fitchburg Muni	3/4515	02/07/14	NDB RWY 20, Amdt 6A.
4/3/2014	MA	Fitchburg	Fitchburg Muni	3/4517	02/07/14	RNAV (GPS) RWY 32, Orig-B.
4/3/2014	MA	Fitchburg	Fitchburg Muni	3/4518	02/07/14	RNAV (GPS) RWY 14, Orig-A.
4/3/2014	OR	Aurora	Aurora State	3/4604	02/04/14	RNAV (GPS) RWY 35, Orig-D.
4/3/2014	AK	Nome	Nome	3/4741	01/22/14	VOR/DME RWY 10, Amdt 2B.
4/3/2014	AK	Nome	Nome	3/4742	01/22/14	LOC/DME BC RWY 10, Amdt 3B.
4/3/2014	AK	Nome	Nome	3/4769	01/22/14	RNAV (GPS) RWY 10, Amdt 1.
4/3/2014	WY	Rawlins	Rawlins Muni/Harvey Field.	3/5389	02/04/14	VOR/DME RWY 22, Amdt 2.
4/3/2014	WY	Rawlins	Rawlins Muni/Harvey Field.	3/5390	02/04/14	RNAV (GPS) RWY 22, Orig.
4/3/2014	TX	Wichita Falls	Kickapoo Downtown	3/5443	02/04/14	NDB RWY 35, Amdt 4.
4/3/2014	MT	Choteau	Choteau	3/5449	02/10/14	NDB OR GPS RWY 23, Orig-A.
4/3/2014	MT	Conrad	Conrad	3/5459	02/03/14	NDB OR GPS RWY 24, Amdt 4B.
4/3/2014	AK	Gustavus	Gustavus	3/5773	02/04/14	RNAV (GPS) RWY 29, Amdt 2A.
4/3/2014	AK	Homer	Homer	3/7744	01/22/14	RNAV (GPS) Z RWY 22, Amdt 1.
4/3/2014	AK	St George	St George	3/7748	01/22/14	ILS RWY 11, Orig-A.
4/3/2014	AK	Homer	Homer	3/7749	01/22/14	RNAV (GPS) Y RWY 22, Amdt 1.
4/3/2014	AK	Homer	Homer	3/7750	01/22/14	LOC/DME BC RWY 22, Amdt 5A.
4/3/2014	AK	Homer	Homer	3/7752	01/22/14	RNAV (GPS) Y RWY 4, Amdt 1.
4/3/2014	AK	Homer	Homer	3/7757	01/22/14	RNAV (GPS) Z RWY 4, Amdt 1.
4/3/2014	AK	Yakutat	Yakutat	3/9556	01/24/14	RNAV (GPS) RWY 2, Amdt 2.
4/3/2014	AK	Venetie	Venetie	3/9780	02/10/14	Takeoff Minimums and (Obstacle) DP, Orig.
4/3/2014	AK	Minchumina	Minchumina	3/9782	01/22/14	RNAV (GPS) RWY 21, Orig-A.
4/3/2014	AK	Minchumina	Minchumina	3/9783	01/22/14	NDB RWY 3, Amdt 3B.
4/3/2014	AK	Minchumina	Minchumina	3/9784	01/22/14	RNAV (GPS) RWY 3, Orig-A.
4/3/2014	AK	Northway	Northway	3/9792	02/03/14	RNAV (GPS) RWY 23, Amdt 1A.
4/3/2014	AK	Klawock	Klawock	3/9793	02/04/14	NDB/DME RWY 2, Amdt 1A.
4/3/2014	OR	Newport	Newport Muni	4/0070	02/03/14	VOR/DME RWY 16, Amdt 8.
4/3/2014	AK	Bethel	Bethel	4/0076	02/04/14	ILS OR LOC/DME Z RWY 19R, Amdt 7B.
4/3/2014	AK	Bethel	Bethel	4/0077	02/04/14	RNAV (GPS) RWY 19R, Amdt 2A.
4/3/2014	AK	Bethel	Bethel	4/0078	02/04/14	VOR/DME RWY 1L, Amdt 2A.
4/3/2014	AK	Bethel	Bethel	4/0079	02/04/14	RNAV (GPS) RWY 19L, Orig-A.
4/3/2014	AK	Bethel	Bethel	4/0080	02/04/14	RNAV (GPS) RWY 1L, Amdt 1A.
4/3/2014	AK	Bethel	Bethel	4/0081	02/04/14	RNAV (GPS) A, Amdt 1.
4/3/2014	AK	Bethel	Bethel	4/0082	02/04/14	VOR/DME RWY 19R, Amdt 2A.
4/3/2014	AK	Bethel	Bethel	4/0083	02/04/14	RNAV (GPS) RWY 1R, Orig-B.
4/3/2014	OR	Portland	Portland-Hillsboro	4/0241	02/04/14	NDB B, Amdt 2.
4/3/2014	AK	Dillingham	Dillingham	4/1521	02/04/14	VOR RWY 1, Amdt 9A.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
4/3/2014	ID	Coeur D'Alene	Coeur D'Alene—Pappy Boyington Field.	4/1584	02/04/14	VOR RWY 6, Orig-B.
4/3/2014	ID	Coeur D'Alene	Coeur D'Alene—Pappy Boyington Field.	4/1585	02/04/14	NDB RWY 6, Amdt 2C.
4/3/2014	AK	Dillingham	Dillingham	4/1924	02/04/14	RNAV (GPS) RWY 1, Amdt 2A.
4/3/2014	AK	Fort Yukon	Fort Yukon	4/1927	02/04/14	RNAV (GPS) RWY 4, Amdt 1.
4/3/2014	AK	Fort Yukon	Fort Yukon	4/1928	02/04/14	RNAV (GPS) RWY 22, Amdt 1.
4/3/2014	NE	Hebron	Hebron Muni	4/1932	02/04/14	GPS RWY 12, Orig-B.
4/3/2014	NE	Hebron	Hebron Muni	4/1933	02/04/14	NDB RWY 12, Amdt 4A.
4/3/2014	NE	Hebron	Hebron Muni	4/1934	02/04/14	GPS RWY 30, Orig-A.
4/3/2014	AZ	Marana	Marana Rgnl	4/2469	02/04/14	RNAV (GPS) RWY 21, Amdt 1.
4/3/2014	AZ	Marana	Marana Rgnl	4/2470	02/04/14	RNAV (GPS) RWY 12, Amdt 1.
4/3/2014	AK	Kwethluk	Kwethluk	4/2504	02/04/14	RNAV (GPS) RWY 36, Orig.
4/3/2014	AK	Kwethluk	Kwethluk	4/2505	02/04/14	RNAV (GPS) RWY 18, Orig.
4/3/2014	SD	Mobridge	Mobridge Muni	4/2521	02/04/14	RNAV (GPS) RWY 12, Orig.
4/3/2014	OH	Waverly	Pike County	4/3053	02/04/14	RNAV (GPS) RWY 25, Orig.
4/3/2014	OH	Waverly	Pike County	4/3054	02/04/14	NDB RWY 25, Amdt 1A.
4/3/2014	CA	Auburn	Auburn Muni	4/3055	02/04/14	RNAV (GPS) RWY 7, Orig.
4/3/2014	AK	Ambler	Ambler	4/3379	02/10/14	Takeoff Minimums and (Obstacle) DP, Orig.
4/3/2014	AK	Ambler	Ambler	4/3380	02/10/14	NDB RWY 36, Amdt 2A.
4/3/2014	NY	Massena	Massena Intl—Richards Field.	4/3394	02/10/14	Takeoff Minimums and (Obstacle) DP, Amdt 8.
4/3/2014	OK	Pryor	Mid-America Industrial	4/4127	02/10/14	VOR/DME OR GPS A, Orig.
4/3/2014	OH	Lebanon	Warren County/John Lane Field.	4/4390	02/10/14	NDB A, Amdt 5A.
4/3/2014	RI	North Kingstown	Quonset State	4/4541	02/07/14	ILS OR LOC RWY 16, Amdt 10B.
4/3/2014	RI	North Kingstown	Quonset State	4/4542	02/07/14	RNAV (GPS) RWY 34, Orig-A.
4/3/2014	RI	North Kingstown	Quonset State	4/4543	02/07/14	RNAV (GPS) RWY 16, Orig-A.
4/3/2014	VA	Stafford	Stafford Rgnl	4/4545	02/07/14	ILS OR LOC RWY 33, Orig.
4/3/2014	PA	Butler	Butler County/K W Scholter Field.	4/4549	02/07/14	Takeoff Minimums and (Obstacle) DP, Amdt 3.
4/3/2014	AK	Bethel	Bethel	4/4580	02/04/14	ILS OR LOC/DME Y RWY 19R, Orig-A.
4/3/2014	NY	Monticello	Sullivan County Intl	4/4677	02/07/14	ILS OR LOC RWY 15, Amdt 5C.
4/3/2014	NY	Monticello	Sullivan County Intl	4/4678	02/07/14	NDB RWY 15, Amdt 7.
4/3/2014	NY	Monticello	Sullivan County Intl	4/4679	02/07/14	RNAV (GPS) RWY 15, Orig.
4/3/2014	NY	Monticello	Sullivan County Intl	4/4683	02/07/14	VOR/DME RWY 33, Amdt 3.
4/3/2014	NY	Norwich	Lt Warren Eaton	4/4686	02/07/14	RNAV (GPS) RWY 1, Orig.
4/3/2014	NY	Monticello	Sullivan County Intl	4/4701	02/07/14	RNAV (GPS) RWY 33, Amdt 1.
4/3/2014	GA	Atlanta	Covington Muni	4/4714	02/07/14	VOR/DME RWY 10, Amdt 5.
4/3/2014	MT	Great Falls	Great Falls Intl	4/4956	02/10/14	NDB RWY 34, Amdt 16B.
4/3/2014	NY	Hudson	Columbia County	4/4961	02/07/14	RNAV (GPS) RWY 21, Orig.
4/3/2014	NY	Hudson	Columbia County	4/4962	02/07/14	NDB A, Amdt 4.
4/3/2014	NY	Hudson	Columbia County	4/4964	02/07/14	RNAV (GPS) RWY 3, Orig.
4/3/2014	MO	Sullivan	Sullivan Rgnl	4/5024	02/04/14	NDB RWY 24, Orig-A.
4/3/2014	FL	New Smyrna Beach	New Smyrna Beach Muni	4/5193	02/07/14	RNAV (GPS) RWY 7, Orig.
4/3/2014	FL	New Smyrna Beach	New Smyrna Beach Muni	4/5197	02/07/14	RADAR 1, Amdt 3A.
4/3/2014	FL	New Smyrna Beach	New Smyrna Beach Muni	4/5198	02/07/14	NDB RWY 29, Amdt 2.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
4/3/2014	FL	New Smyrna Beach	New Smyrna Beach Muni	4/5199	02/07/14	RNAV (GPS) RWY 29, Orig.
4/3/2014	FL	New Smyrna Beach	New Smyrna Beach Muni	4/5200	02/07/14	RNAV (GPS) RWY 25, Orig.
4/3/2014	FL	New Smyrna Beach	New Smyrna Beach Muni	4/5201	02/07/14	RNAV (GPS) RWY 2, Orig.
4/3/2014	DC	Washington	Manassas Rgnl/Harry P. Davis Field.	4/5240	02/07/14	RNAV (GPS) RWY 16L, Amdt 1.
4/3/2014	FL	La Belle	La Belle Muni	4/5281	02/07/14	RNAV (GPS) RWY 32, Orig.
4/3/2014	FL	La Belle	La Belle Muni	4/5283	02/07/14	RNAV (GPS) RWY 14, Orig-A.
4/3/2014	MA	Plymouth	Plymouth Muni	4/5310	02/07/14	RNAV (GPS) RWY 24, Orig.
4/3/2014	NJ	Mount Holly	South Jersey Rgnl	4/5312	02/07/14	RNAV (GPS) RWY 8, Orig.
4/3/2014	NJ	Mount Holly	South Jersey Rgnl	4/5314	02/07/14	RNAV (GPS) RWY 26, Amdt 1.
4/3/2014	TN	Athens	McMinn County	4/5315	02/07/14	NDB RWY 2, Amdt 6.
4/3/2014	TN	Athens	McMinn County	4/5316	02/07/14	NDB RWY 20, Amdt 7.
4/3/2014	TN	Livingston	Livingston Muni	4/5329	02/07/14	RNAV (GPS) RWY 3, Amdt 1.
4/3/2014	TN	Livingston	Livingston Muni	4/5330	02/07/14	VOR/DME RWY 21, Amdt 5.
4/3/2014	CT	Chester	Chester	4/5540	02/04/14	RNAV (GPS) RWY 35, Orig.
4/3/2014	CT	Chester	Chester	4/5541	02/04/14	RNAV (GPS) RWY 17, Orig.
4/3/2014	CT	Chester	Chester	4/5542	02/04/14	VOR A, Amdt 4.
4/3/2014	AL	Haleyville	Posey Field	4/5551	02/07/14	VOR/DME RWY 18, Amdt 5.
4/3/2014	AL	Haleyville	Posey Field	4/5552	02/07/14	RNAV (GPS) RWY 18, Orig.
4/3/2014	AL	Haleyville	Posey Field	4/5553	02/07/14	VOR/DME A, Amdt 4.
4/3/2014	AL	Haleyville	Posey Field	4/5554	02/07/14	RNAV (GPS) RWY 36, Orig.
4/3/2014	WI	Shawano	Shawano Muni	4/5602	02/07/14	Takeoff Minimums and (Obstacle) DP, Amdt 2.
4/3/2014	WI	Amery	Amery Muni	4/5603	02/07/14	Takeoff Minimums and (Obstacle) DP, Amdt 1.
4/3/2014	PA	West Chester	Brandywine	4/5824	02/10/14	RNAV (GPS) RWY 9, Orig-A.
4/3/2014	PA	West Chester	Brandywine	4/5825	02/10/14	RNAV (GPS) RWY 27, Orig-A.
4/3/2014	PA	West Chester	Brandywine	4/5826	02/10/14	VOR A, Amdt 3.
4/3/2014	NJ	Toms River	Ocean County Airport	4/5831	02/07/14	Takeoff Minimums and(Obstacle) DP, Amdt 1.
4/3/2014	NY	Massena	Massena Intl—Richards Field.	4/5889	02/07/14	RNAV (GPS) RWY 9, Amdt 1A.
4/3/2014	VA	Suffolk	Suffolk Executive	4/5890	02/07/14	RNAV (GPS) RWY 7, Amdt 1.
4/3/2014	TN	Morristown	Moore-Murrell	4/5901	02/07/14	RNAV (GPS) RWY 5, Orig.
4/3/2014	TN	Morristown	Moore-Murrell	4/5902	02/07/14	NDB RWY 5, Amdt 5.
4/3/2014	TN	Morristown	Moore-Murrell	4/5903	02/07/14	RNAV (GPS) RWY 23, Orig.
4/3/2014	TN	Morristown	Moore-Murrell	4/5904	02/07/14	SDF RWY 5, Amdt 5.
4/3/2014	NC	Oak Island	Cape Fear Rgnl Jetport/ Howie Franklin Fld.	4/5905	02/10/14	RNAV (GPS) RWY 23, Orig.
4/3/2014	NC	Oak Island	Cape Fear Rgnl Jetport/ Howie Franklin Fld.	4/5906	02/10/14	RNAV (GPS) RWY 5, Amdt 1B.
4/3/2014	NY	Farmingdale	Republic	4/6074	02/07/14	RNAV (GPS) RWY 19, Amdt 2.
4/3/2014	ID	Mountain Home	Mountain Home Muni	4/6563	02/10/14	NDB RWY 28, Amdt 3.
4/3/2014	ID	Mountain Home	Mountain Home Muni	4/6564	02/10/14	Takeoff Minimums and (Obstacle) DP, Amdt 4.

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BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

Adjustments to Civil Penalty Amounts

AGENCY: Federal Trade Commission.

ACTION: Final rule amendments.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is increasing certain civil penalty amounts within its jurisdiction, as required by law. These adjustments reflect inflation since the penalty amounts were last adjusted.

DATES: Effective April 10, 2014.

FOR FURTHER INFORMATION CONTACT: Kenny A. Wright, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2907, *kwright@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Commission Rule 1.98 sets forth civil penalty amounts for violations of certain laws enforced by the Commission.[1] The Commission is increasing many of these amounts to account for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 ("FCPIAA"),[2] as amended by the Debt Collection Improvement Act of 1996.[3] The following adjusted amounts will take effect on April 10, 2014:

- Section 11(l) of the Clayton Act, 15 U.S.C. 21(*l*) (violations of cease and desist orders issued under Clayton Act section 11(b))—$8,500;
- Section 10 of the FTC Act, 15 U.S.C. 50 (failure to file reports required by FTC Act)—$210;
- Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65 (failure to file required business information with the Commission)—$210;
- Section 6(b) of the Wool Products Labeling Act, 15 U.SC. 68d(b) (failure to maintain proper records of fiber content)—$210;
- Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e) (failure to maintain records)—$210;
- Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2) (failure to maintain records)—$210;
- Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a) (FTC enforcement of knowing violations)—$210;
- Section 525(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) (recycled oil labeling violations)—$8,500;
- Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, 21 U.S.C. 355 note (failure to comply with filing requirements)—$12,100; and
- Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304 (violations of prohibitions on market manipulation and provision of false information to federal agencies)—$1,100,000

The FCPIAA's rounding rules do not permit adjustment of the other civil penalties listed in Rule 1.98 at this time.[4]

Calculation of Inflation Adjustments

The FCPIAA directs federal agencies to adjust civil monetary penalties under their jurisdiction for inflation at least once every four years pursuant to a statutory "cost-of-living adjustment."[5] The cost of living adjustment is defined as the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers ("CPI–U") for the month of June for the year preceding the adjustment exceeds the CPI–U for the month of June for the year in which the amount of the penalty was last set or adjusted pursuant to law.[6] Agencies do not have discretion over whether to adjust a maximum civil penalty at least once every four years, or the method used to determine the adjustment.

The Commission previously adjusted its civil penalty amounts in 1996, 2004, and 2009.[7] No adjustments were warranted in 2000 due to the FCPIAA's rounding rules.[8]

In 2009, the Commission adjusted civil penalties under Clayton Act sections 7A(g)(1) and 11(l), FTC Act sections 5(l) and 5(m)(1)(A)–(B), sections 525(a) and (b) of the Energy Policy and Conservation Act ("EPCA"), and section 621(a)(2) of the Fair Credit Reporting Act ("FCRA"). *See* 74 FR 857 (Jan. 9, 2009). For these civil penalties, the relevant inflation period is between June 2009 and June 2013. Within that timeframe, the CPI–U has increased from 215.693 to 233.504, or 8.3%. This increase triggers a statutory adjustment from $7,500 to $8,500 for civil penalties under Clayton Act section 11(*l*) and EPCA section 525(a).

At this time, the statute's rounding rules do not authorize the FTC to increase the amounts of the other civil penalties previously adjusted in 2009. The FCPIAA contains specific rules for rounding each increase based on the size of the penalty.[9] Increases in civil penalties of greater than $10,000 and less than or equal to $100,000 must be in $5,000 increments, and the increase in the CPI between June 2009 and June 2013 was not high enough to round up any adjustment to $5,000. Thus, the statute does not permit adjustments for civil penalties under Clayton Act sections 7A(g)(1), FTC Act sections 5(*l*) and 5(m)(1)(A)–(B), and EPCA section 525(b). Likewise, increases in civil penalties of greater than $1,000 and less than or equal to $10,000 must be in increments of $1,000, and the increase in the CPI was not high enough to warrant an adjustment for civil penalties under FCRA section 621(a)(2).

The other civil penalties in Rule 1.98 did not qualify for adjustment in 2009.[10] These additional penalties were last adjusted in 1996.[11] Thus, the relevant inflation period is between June 1996 and June 2013. Within that time frame, the CPI–U has increased from 156.7 to 233.504 for a total percentage increase of 49.0%. Applying this percentage increase results in an adjustment from $110 to $210 for civil penalties under the following statutory provisions: FTC Act section 10, Webb-Pomerene (Export Trade) Act section 5, Wool Products Labeling Act section 6(b), Fur Products Labeling Act sections 3(e) and 8(d)(2), and EPCA section 333(a).

The FTC is increasing the civil penalty amount under section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 ("MMA") for the first time.[12] From June 2003 to June 2013, the CPI–U has increased from 183.7 to 233.504, a 27.1% increase. Because the FCPIAA imposes a ten percent cap on initial civil penalty adjustments, the

[1] 16 CFR 1.98.

[2] 28 U.S.C. 2461 note.

[3] Public Law 104–134, section 31001(s)(1), 110 Stat. 1321–373.

[4] 28 U.S.C. 2461 note (5)(a).

[5] *Id.*

[6] 28 U.S.C. 2461 note (3), (5)(b).

[7] *See* 61 FR 54,548 (Oct. 21, 1996); 69 FR 76,611 (Dec. 22, 2004); 74 FR 857 (Jan. 9, 2009).

[8] *See* 65 FR 69,665 (Nov. 20, 2000).

[9] 28 U.S.C. 2461 note (5)(a)(1)–(6).

[10] 74 FR at 858.

[11] The Commission reviewed these civil penalties for potential adjustments in 2000 and 2004, but determined that no adjustments inflation were warranted at that time. *See* 65 FR at 69665; 69 FR at 76612. In 2004, only the civil penalties under section 11(*l*) of the Clayton Act and sections 525(a)-(b) of EPCA were adjusted for inflation, 69 FR at 76612. These penalties were subsequently adjusted for inflation again in 2009, along with the others identified above. 74 FR at 858.

[12] In 2004 and 2009, the Commission reviewed the penalties under Section 1115(a) of the MMA but determined that no adjustments were warranted by inflation at that time. 69 FR at 76612; 74 FR at 858.

Commission is adjusting this penalty from $11,000 to $12,100.[13]

In addition, the FTC is adjusting civil penalties under section 814(a) of the Energy Independence and Security Act of 2007 ("EISA")[14] The CPI–U has increased from 208.352 in June 2007 to 233.504 in June 2013, or 12.1%. Applying this percentage increase and the FCPIAA's ten percent cap on initial adjustments, this penalty will increase from $1,000,000 to $1,100,000.

To reflect these adjustments, the FTC is amending Commission Rule 1.98 by modifying paragraphs (b) and (f)–(l), adding new paragraphs (n)–(o), and redesignating current paragraph (n) as paragraph (p). These changes take effect on April 10, 2014.

Procedural Requirements

Under the Administrative Procedure Act ("APA"), a final rule may be issued without public notice and comment if an agency finds good cause that notice and comment are impractical, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). Because the Commission must adjust its civil penalties according to a statutory formula, the Commission finds that good cause exists to forego public notice and comment under the APA. *Id.* Because these adjustments are mandated by statute and do not involve the exercise of Commission discretion or any policy judgments, public notice and comment is unnecessary. For this reason, the requirements of the Regulatory Flexibility Act ("RFA") also do not apply.[15] Finally, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended. 44 U.S.C. 3501 *et seq.*

List of Subjects for 16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

Subpart L—[Amended]

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

Authority: 28 U.S.C. 2461 note.

■ 2. Revise § 1.98 to read as follows:

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission's jurisdiction. The following civil penalty amounts apply to violations occurring after April 10, 2014.

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—$16,000;

(b) Section 11(l) of the Clayton Act, 15 U.S.C. 21(l)—$8,500;

(c) Section 5(l) of the FTC Act, 15 U.S.C. 45(l)—$16,000;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—$16,000;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—$16,000;

(f) Section 10 of the FTC Act, 15 U.S.C. 50—$210;

(g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—$210;

(h) Section 6(b) of the Wool Products Labeling Act, 15 U.SC. 68d(b)—$210;

(i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—$210;

(j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—$210;

(k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—$210;

(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—$8,500 and $16,000, respectively;

(m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—$3,500;

(n) Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, 21 U.S.C. 355 note—$12,100;

(o) Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304—$1,100,000; and

(p) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–05266 Filed 3–10–14; 8:45 am]

BILLING CODE 6750–01–P

[13] 28 U.S.C.2461 note (citing Pub. L. 104–134, section 31001(s)(2), 110 Stat. 1321, 1373 (1996)).

[14] The Commission determined in 2009 that its civil penalty authority under EISA was too recent to warrant adjustment for inflation. 74 FR at 858.

[15] A regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment. *See* 5 U.S.C. 603.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2009–F–0570]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Vitamin D_2 Bakers Yeast

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections.

SUMMARY: The Food and Drug Administration (FDA or we) is responding to objections that we have received on the final rule that amended the food additive regulations authorizing the use of vitamin D_2 bakers yeast as a source of vitamin D_2 and as a leavening agent in yeast-leavened baked products at levels not to exceed 400 International Units (IU) of vitamin D_2 per 100 grams (g) in the finished food. After reviewing the objections to the final rule, FDA has concluded that they do not provide a basis for amending or revoking the regulation.

DATES: Effective date confirmed: August 29, 2012.

FOR FURTHER INFORMATION CONTACT: Judith Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1071.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of December 17, 2009 (74 FR 66979), FDA published a notice announcing the filing of a food additive petition (FAP 9A4779) submitted by Lallemand, Inc., c/o Dennis T. Gordon, 117 N. Welcome Slough Rd., Puget Island, Cathlamet, WA 98612. The petition proposed to amend the food additive regulations in part 172, *Food Additives Permitted for Direct Addition to Food for Human Consumption* (21 CFR part 172), to provide for the safe use of vitamin D_2 bakers yeast as a dual purpose nutrient supplement and leavening agent or dough relaxer in yeast-containing baked products at levels not to exceed 400 IU of vitamin D_2 per 100 g in the finished food. The specific foods identified in the petition were yeast-leavened baked goods and baking mixes, and yeast-leavened baked snack foods. After the notice was published, Lallemand amended the petition to exclude the proposed use of the additive as a dough relaxer.

In response to FAP 9A4779, we issued a final rule in the **Federal Register** on August 29, 2012 (77 FR 52228), authorizing the safe use of vitamin D_2 bakers yeast as a source of vitamin D_2 and as a leavening agent in yeast-leavened baked products at levels not to exceed 400 IU of vitamin D_2 per 100 g in the finished food. This regulation is codified at § 172.381. We based our decision on data contained in the petition and in our files. The preamble to the final rule (77 FR 52228 at 52231) stated that objections to the final rule and requests for a hearing were due within 30 days of the publication date (i.e., by September 28, 2012).

II. Objections and Requests for a Hearing

Section 409(f)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(f)(1)) provides that, within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such order may file objections, "specifying with particularity the provisions of the order deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections."

Under § 171.110 (21 CFR 171.110), objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA's regulations. Under § 12.22(a), each objection must meet the following conditions: (1) Must be submitted on or before the 30th day after the date of publication of the final rule; (2) must be separately numbered; (3) must specify with particularity the provision of the regulation or proposed order objected to; (4) must specifically state each objection on which a hearing is requested; failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection; and (5) must include a detailed description and analysis of the factual information to be presented in support of the objection if a hearing is requested; failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

Following publication of the final rule authorizing the use of vitamin D_2 bakers yeast as a source of vitamin D_2 and as a leavening agent in yeast-leavened baked products at levels not to exceed 400 IU of vitamin D_2 per 100 g in the finished food, we received a letter from AB Mauri North America (AB Mauri) (letter to Docket No. FDA–2009–F–0570, September 26, 2012) containing two objections. The letter from AB Mauri did not request a hearing on either objection. Therefore, AB Mauri has waived its right to a hearing on those objections (see § 12.22(a)(4)). The only remaining question under § 12.24(a) is whether AB Mauri's objections, and the information submitted in support of the objections, establish that the regulation authorizing the use of vitamin D_2 bakers yeast should be modified or revoked. As discussed in detail in section III, we have concluded that AB Mauri has not established a basis for modification or revocation of the regulation authorizing the use of vitamin D_2 bakers yeast.

III. Analysis of Objections

The first objection raised by AB Mauri contends that the regulation authorizing the use of vitamin D_2 bakers yeast in food (§ 172.381) is based on the incorrect assumptions that: (1) vitamin D_2 bakers yeast can be produced in such a way that the vitamin D_2 levels in the yeast itself can be accurately controlled and declared; and (2) vitamin D_2 bakers yeast can be used by food manufacturers in a way that allows them to control the level of vitamin D_2 in the finished product and accurately declare its level on the labeling of the finished food product. AB Mauri asserts that these assumptions may result in vitamin D_2 levels in finished products that exceed the maximum level specified in the regulation and declaration of inaccurate vitamin D_2 levels on finished product nutrition labels.

In support of their claim, AB Mauri presents vitamin D_2 levels from a limited number of samples of Lallemand's commercially available vitamin D_2 bakers yeast that AB Mauri had analyzed by an independent laboratory. According to AB Mauri, the results of the independent analysis demonstrate that the actual amount of vitamin D_2 in bakers yeast varies, and does not necessarily reflect the level of vitamin D_2 that Lallemand claims on its Web site is "typical" for the product. AB Mauri also provides theoretical ranges of vitamin D_2 levels that could result in batches of the same size product, depending on the level and type of vitamin D_2 bakers yeast used. According to AB Mauri, using different levels and types of vitamin D_2 bakers yeast result in different levels of vitamin D_2 in batches of equal size.

However, AB Mauri did not provide the manufacturer's certificates of analysis so that the vitamin D_2 levels of the analyzed samples could be verified. Additionally, AB Mauri did not identify the analytical method used in the analyses of vitamin D_2 bakers yeast and did not provide information on the samples that were analyzed (e.g., lot numbers, number of samples and replicates analyzed, age of samples, sample storage conditions, or solid content of the yeast cream samples). Therefore, the information provided by AB Mauri is not sufficient to demonstrate that there was a difference in the analyzed vitamin D_2 levels and the vitamin D_2 levels which Lallemand claims is typical for the product.

The information provided by AB Mauri also does not provide sufficient evidence showing levels of vitamin D_2 in finished baked products made with vitamin D_2 bakers yeast exceed the maximum permitted level since the levels of vitamin D_2 in the finished baked products are based on hypothetical percentages of yeast used. Therefore, this objection does not provide a basis for FDA to reconsider its decision to issue the final rule on vitamin D_2 bakers yeast.

Our review of the petition explicitly considered variability of vitamin D_2 in ultraviolet light-treated bakers yeast. The petitioner provided analytical data of vitamin D_2 levels from production lots of vitamin D_2 bakers yeast, including the certificates of analysis for the products analyzed. Results demonstrated that vitamin D_2 levels were at least equal to 80 percent of the value for vitamin D_2 declared on the label of the vitamin D_2 bakers yeast product (see 21 CFR 101.9(g)(4)(ii)). Additionally, certificates of analysis, which include vitamin D_2 levels in the product, are provided with each product sold, thus allowing bakers to calculate the amount of vitamin D_2 that each finished product will contain. Based on these data and other information provided in the petition, we concluded that there are adequate controls in place to ensure that vitamin D_2 bakers yeast may be used in conformance with the provisions in the regulation.

Section 409 of the FD&C Act requires that a regulation authorizing the use of a food additive must prescribe, with respect to the proposed uses of the additive, the conditions under which the additive may be safely used. Section 172.381, as established in the final rule, does not include a requirement to label finished food with the level of vitamin D_2 contained in the finished food. However, to ensure that the level of vitamin D_2 in the finished food does not exceed the maximum level specified in the regulation, § 172.381(d) states that the label or labeling of the food additive container must bear, in addition to the other information required by the FD&C Act, adequate directions for use to provide a final product that complies with the limitations prescribed in § 172.381(c) (under which the additive may be used in yeast-leavened baked goods and baking mixes and yeast-

leavened baked snack foods at levels not to exceed 400 IU of vitamin D_2 per 100 g in the finished food). The labeling requirement in § 172.381(d) ensures that when vitamin D_2 bakers yeast is used to make products, the manufacturer will have the information necessary to use the additive in conformance with the provisions of the regulation.

The second objection from AB Mauri asserts that if FDA is going to approve vitamin D_2 supplementation in baked products at higher levels than are currently permitted by the regulations, it should do so in a way that permits better control of vitamin D levels in finished products by considering the use of vitamin D_3 instead. AB Mauri questions whether vitamin D_2 is as effective for humans as vitamin D_3 at similar levels, and cites two peer-reviewed journal articles to support this claim.

Our evaluation of the petition was based solely on the safety of the proposed use of vitamin D_2 bakers yeast in yeast-containing baked goods. Therefore, expanding the scope of the final rule to provide for the safe use of vitamin D_3 is beyond the scope of the petition submitted by Lallemand. If AB Mauri is interested in obtaining approval for the expanded use of vitamin D_3 in food, they may do so by petitioning FDA for this use in accordance with section 409(b) of the FD&C Act.

IV. Summary and Conclusions

Section 409 of the FD&C Act requires that a food additive be shown to be safe prior to marketing. Under 21 CFR 170.3(i), a food additive is "safe" if there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use. In the final rule authorizing the use of vitamin D_2 bakers yeast, we concluded that the data presented by the petitioner to establish safety of the additive demonstrate that vitamin D_2 bakers yeast is safe for its intended use in yeast-leavened baked products at levels not to exceed 400 IU of vitamin D_2 per 100 g in the finished food.

The petitioner has the burden to demonstrate the safety of the additive to gain FDA approval. Once we make a finding of safety, the burden shifts to an objector, who must come forward with evidence that calls into question our conclusion (see section 409(f)(1) of the FD&C Act). After evaluating the objections from AB Mauri, we have concluded that the objections do not provide any basis for us to reconsider our decision to issue the final rule authorizing the use of vitamin D_2 bakers yeast as a dual purpose nutrient supplement and leavening agent in yeast-containing baked products at levels not to exceed 400 IU of vitamin D_2 per 100 g in the finished food. Accordingly, we are not making any changes in response to the objections.

Dated: March 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–05060 Filed 3–10–14; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2014–N–0002]

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 110 approved new animal drug applications (NADAs) and 14 approved abbreviated new animal drug applications (ANADAs) for new animal drug for use in animal feed from Pfizer, Inc., including its several subsidiaries and divisions, to Zoetis, Inc.

DATES: This rule is effective March 11, 2014.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855; 240–276–8300, *steven.vaughn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 E. 42d St., New York, NY 10017, and its wholly owned subsidiaries Alpharma, LLC; Fort Dodge Animal Health, Division of Wyeth; Fort Dodge Animal Health, Division of Wyeth Holdings Corp.; and its division, Pharmacia & Upjohn Co., have informed FDA that they have transferred ownership of, and all rights and interest in, the 110 approved NADAs and 14 approved ANADAs in Table 1 to Zoetis, Inc., 333 Portage St., Kalamazoo, MI 4900.

TABLE 1—NADAS AND ANADAS TRANSFERRED FROM PFIZER, INC., TO ZOETIS, INC.

File No.	Product name
007–616	HISTOSTAT 50 (nitarsone) Type A Medicated Article.
011–116	ZOAMIX (zoalene) Type A Medicated Article.
012–375	ALBAMIX (novobiocin) Type A Medicated Article.
012–680	PHARMASTATIN 20 (nystatin) Type A Medicated Article.
013–747	Zoalene 90 Medicated Coccidiostat.
033–950	Sulfamerazine In Fish Grade.
034–085	LINCOMIX (lincomycin) Type A Medicated Article.
034–254	MGA (melengestrol acetate) Type A Medicated Article.
035–688	AUREOMIX Granular 500 (pen G, CTC, sulfamethazine) Type A Medicated Article.
035–805	AUREO S 700 Granular (CTC and sulfamethazine) Type A Medicated Article.
036–361	Amprolium and ethopabate/CTC (chlortetracycline)/sodium sulfate.
039–077	CSP (chlortetracycline, sulfathiazole, and penicillin G procaine) 250 and 500 Type A Medicated Articles.
039–402	MGA 500 (melengestrol acetate) Liquid Type A Medicated Article.
039–417	DECCOX (decoquinate) Type A Medicated Article.
040–209	ROFENAID 40 (sulfadimethoxine and ormetoprim) Type A Medicated Article.
041–647	AUREOMIX S 700–A (CTC and sulfamethazine) Type A Medicated Article.
041–648	AUREOMIX S 700–D (CTC and sulfamethazine) Type A Medicated Article.
041–649	AUREOMIX S 700–G (CTC and sulfamethazine) Type A Medicated Article.

TABLE 1—NADAs AND ANADAs TRANSFERRED FROM PFIZER, INC., TO ZOETIS, INC.—Continued

File No.	Product name
041–650	AUREOMIX S 700–E (CTC and sulfamethazine) Type A Medicated Article.
041–651	AUREOMIX S 700–F (CTC and sulfamethazine) Type A Medicated Article.
041–652	AUREOMIX S 700–C–2 (CTC and sulfamethazine) Type A Medicated Article.
041–653	AUREOMIX S 700–B (CTC and sulfamethazine) Type A Medicated Article.
041–654	AUREOMIX S 700–H (CTC and sulfamethazine) Type A Medicated Article.
044–820	AMPROL PLUS (amprolium and ethopabate)/LINCOMIX (lincomycin).
044–972	LINCOMIX (lincomycin)/COYDEN (clopidol).
045–348	ALBAC (bacitracin zinc)/DECCOX (decoquinate).
045–444	CHLORMAX (chlortetracycline)/DECCOX (decoquinate).
046–415	Tylosin Type A Medicated Articles.
046–592	BMD (bacitracin methylene disalicylate) Type A Medicated Articles.
046–666	Penicillin G Procaine Type A Medicated Articles.
046–699	CHLORMAX (chlortetracycline) Type A Medicated Articles.
046–718	MGA (liquid) (melengestrol acetate)/TERRAMYCIN (oxytetracycline).
046–719	MGA (dry) (melengestrol acetate)/TERRAMYCIN (oxytetracycline).
046–920	BACIFERM (bacitracin zinc) Type A Medicated Articles.
047–261	DECCOX (decoquinate)/LINCOMIX (lincomycin).
047–262	DECCOX (decoquinate)/LINCOMIX (lincomycin).
048–486	ROBENZ (robenidine) Type A Medicated Article.
048–761	AUREOMYCIN (chlortetracycline) Type A Medicated Article.
048–762	Chlortetracycline Type A Medicated Article.
048–763	Chlortetracycline Type A Medicated Article.
048–954	ZOAMIX (zoalene)/LINCOMIX (lincomycin).
049–287	PFICHLOR (chlortetracycline) Type A Medicated Article.
055–040	SF Mix 66 (chlortetracycline) Type A Medicated Article.
065–020	Micro CTC (chlortetracycline) 100 Type A Medicated Article.
091–668	CHLORMAX SP (chlortetracycline) 250 and 500 Type A Medicated Articles.
091–749	TYLAN 40 Plus Sulfa-G.
092–482	COBAN (monensin)/LINCOMIX (lincomycin).
092–507	ROBENZ/Aureomycin 500 Gm.
092–522	COBAN (monensin)/LINCOMIX (lincomycin).
093–106	ROBENZ (robenidine)/LINCOMIX (lincomycin).
096–298	AVATEC and BOVATEC (lasalocid) Type A Medicated Articles.
096–933	ROBENZ (robenidine)/Bacitracin Zn.
097–085	Bacitracin MD/ROBENZ (robenidine).
097–505	LINCOMIX (lincomycin) Type A Medicated Articles.
098–452	ALBAC 50 (bacitracin zinc) Type A Medicated Article.
100–901	PFICHLOR (chlortetracycline) 100S Milk Replacer Type A Medicated Article.
101–689	AVATEC (lasalocid)/LINCOMIX (lincomycin).
103–758	TERRAMYCIN (oxytetracycline) Type A Medicated Article.
107–347	CHEQUE (mibolerone) Medicated Dog Food.
107–996	AVATEC (lasalocid)/FORTRACIN (lasalocid).
114–794	AMPROL HI–E (amprolium and ethopabate)/BACIFERM (bacitracin zinc).
121–553	AUREOMYCIN (chlortetracycline)/COBAN (monensin).
124–309	MGA 100 and 200 (melengestrol acetate)/RUMENSIN (monensin).
125–476	MGA 500 (melengestrol acetate)/RUMENSIN (monensin).
128–686	BIO–COX (salinomycin) Type A Medicated Article.
133–334	Virginiamycin Type A Medicated Article.
134–284	BIO–COX (salinomycin)/FLAVOMYCIN (bambermycins).
134–830	ALBAC (bacitracin zinc)/COBAN (monensin).
135–746	BIO–COX (salinomycin)/BMD (bacitracin methylene disalicylate).
137–537	BIO–COX (salinomycin)/LINCOMIX (lincomycin).
138–456	COBAN (monensin)/BMD (bacitracin methylene disalicylate).
138–792	MGA 100 and 200 (melengestrol)/RUMENSIN (monensin)/TYLAN (tylosin).
138–870	MGA 500 (melengestrol acetate)/BOVATEC (lasalocid)/TYLAN (tylosin).
138–904	MGA (melengestrol acetate)/BOVATEC (lasalocid)/TYLAN (tylosin).
138–941	LINCOMIX (lincomycin)/BANMINTH (pyrantel).
138–992	MGA 200 (melengestrol acetate)/BOVATEC (lasalocid)/TYLAN (tylosin).
138–995	MGA (melengestrol acetate)/TYLAN (tylosin).
139–075	CYGRO (maduramicin) Type A Medicated Article.
139–192	MGA 500 (melengestrol acetate)/TYLAN (tylosin).
139–235	BACIFERM (bacitracin zinc)/BIO–COX (salinomycin).
139–876	MGA 200 (melengestrol acetate)/BOVATEC (lasalocid).
140–288	MGA 500 (melengestrol acetate)/BOVATEC (lasalocid).
140–443	HYGROMIX 1.6 (hygromycin B) Premix.
140–579	BOVATEC (lasalocid)/TERRAMYCIN (oxytetracycline).
140–853	BMD (bacitracin methylene disalicylate)/MONTEBAN (naracin).
140–859	AUREOMYCIN (chlortetracycline)/BIO–COX (salinomycin).
140–865	BACIFERM or ALBAC (bacitracin zinc)/MONTEBAN (naracin).
141–025	CATTLYST (laidlomycin) Type A Medicated Article.
141–059	BMD (bacitracin methylene disalicylate)/CTC (chlortetracycline).
141–083	AVATEC (lasalocid)/BACIFERM (bacitracin zinc).

TABLE 1—NADAs AND ANADAs TRANSFERRED FROM PFIZER, INC., TO ZOETIS, INC.—Continued

File No.	Product name
141–085	BMD (bacitracin methylene disalicylate)/ZOAMIX (zoalene).
141–088	HISTOSTAT (nitarsone)/BMD (bacitracin methylene disalicylate).
141–102	BMD (bacitracin methylene disalicylate)/DECCOX (decoquinate).
141–109	AVATEC (lasalocid)/BACIFERM (bacitracin zinc).
141–124	BMD (bacitracin methylene disalicylate)/MAXIBAN (naracin and nicarbazin).
141–132	HISTOSTAT (nitarsone)/ALBAC (bacitracin zinc).
141–136	BMD (bacitracin methylene disalicylate)/BIO–COX (salinomycin).
141–140	BMD (bacitracin methylene disalicylate)/COBAN (monensin).
141–144	BMD (bacitracin methylene disalicylate)/SAFE–GUARD (fenbendazole).
141–147	DECCOX (decoquinate)/CHLORMAX (chlortetracycline).
141–148	DECCOX (decoquinate)/RUMENSIN (monensin).
141–149	DECCOX (decoquinate)/RUMENSIN (monensin)/TYLAN (tylosin).
141–150	AVATEC (lasalocid)/STAFAC (virginiamycin).
141–154	BMD (bacitracin methylene disalicylate)/ROBENZ (robenidine).
141–156	BMD (bacitracin methylene disalicylate)/AMPROL (amprolium).
141–179	BMD (bacitracin methylene disalicylate)/AVATEC (lasalocid).
141–181	ALBAC (bacitracin zinc)/AVATEC (lasalocid).
141–185	DECCOX (decoquinate)/AUREOMYCIN (chlortetracycline).
141–201	CATTLYST (laidlomycin)/AUREOMYCIN (chlortetracycline).
141–250	BOVATEC (lasalocid)/AUREOMYCIN (chlortetracycline).
200–140	AUREOZOL (pen G, CTC, sulfathiazole) Type A Medicated Article.
200–167	AUREOZOL 500 Granular (pen G, CTC, sulfathiazole) Type A Medicated Article.
200–204	ALBAC (bacitracin zinc)/BIO–COX (salinomycin).
200–205	ALBAC (bacitracin zinc)/AMPROL HI–E (amprolium and ethopabate).
200–210	ALBAC (bacitracin zinc)/SACOX (salinomycin).
200–212	ALBAC (bacitracin zinc)/ROBENZ.
200–213	ALBAC (bacitracin zinc)/DECCOX (decoquinate).
200–218	ALBAC (bacitracin zinc)/COYDEN 25 (clopidol).
200–223	ALBAC 50 (bacitracin zinc) Type A Medicated Article.
200–242	BMD (bacitracin methylene disalicylate)/AUREOMYCIN (chlortetracycline).
200–261	CHLORMAX (chlortetracycline)/BIO–COX (salinomycin).
200–262	CHLORMAX (chlortetracycline)/SACOX (salinomycin).
200–263	CHLORMAX (chlortetracycline)/COBAN (monensin).
200–478	ALBAC 50 (bacitracin zinc)/NICARB (nicarbazin).

Accordingly, the Agency is amending the regulations in 21 CFR part 558 to reflect these transfers of ownership. In addition, the regulations are being amended to make minor corrections. This is being done to increase the accuracy and readability of the regulations.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808

List of Subjects in 21 CFR Part 558 Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.76 [Amended]

■ 2. In § 558.76, in paragraph (a), remove "046573" and in its place add "054771"; and in the table in paragraph (d)(1), in the "Limitations" column and in the "Sponsor" column, remove "046573" wherever it occurs and in its place add "054771".

§ 558.78 [Amended]

■ 3. In § 558.78, in paragraph (b), remove "046573" and in its place add "054771"; and in the table in paragraph (d)(1), in the "Sponsor" column, remove "046573" wherever it occurs and in its place add "054771"; and in paragraph (d)(2)(ii), remove "046573" and in its place add "054771".

§ 558.128 [Amended]

■ 4. Amend § 558.128 as follows:
■ a. In paragraph (b)(1), remove "046573" and in its place add "054771";
■ b. In the tables in paragraphs (e)(1), (e)(2), (e)(3), and (e)(5), in the "Sponsor" column, remove "046573" wherever it occurs and in its place add "054771";
■ c. In the table in paragraph (e)(4), in the "Limitations" column and in the "Sponsor" column, remove "046573" wherever it occurs and in its place add "054771";
■ d. In paragraph (e)(6)(iv), remove "per head" and in its place add "per pound of body weight"; and
■ e. In paragraph (e)(6)(v), remove "046573" and in its place add "054771".

§ 558.140 [Amended]

■ 5. In § 558.140, in paragraph (a), remove "046573" and in its place add "054771"; and revise paragraph (c)(3) to read as follows:

§ 558.140 Chlortetracycline and sulfamethazine.

* * * * *

(c) * * *

(3) *Limitations.* Feed for 28 days, withdraw 7 days prior to slaughter. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal.

§ 558.145 [Amended]

■ 6. In § 558.145, in paragraph (a)(1), remove "046573" and in its place add "054771"; and in paragraph (a)(2) remove "046573 and 048164" and in its place add "Nos. 048164 and 054771".

§ 558.155 [Amended]

■ 7. In § 558.155, in paragraphs (a)(1) and (2), remove "046573" and in its place add "054771".

§ 558.175 [Amended]

■ 8. In § 558.175, in the table in paragraph (d), in the "Limitations" column and in the "Sponsor" column, remove "046573" wherever it occurs and in its place add "054771"; and in paragraph (d)(6), in the "Sponsor" column, remove "000009" and in its place add "054771".

§ 558.195 [Amended]

■ 9. In § 558.195, in paragraph (b), remove "046573" and in its place add "054771"; in the tables in paragraphs (e)(1), (e)(2), and (e)(3), in the "Limitations" column and in the "Sponsor" column, remove "046573" wherever it occurs and in its place add "054771"; and in the table in paragraph (e)(1), in the "Limitations" column and in the "Sponsor" column, remove "000009" wherever it occurs and in its place add "054771".

§ 558.198 [Amended]

■ 10. In § 558.198, in the tables in paragraphs (d)(1) and (2), in the "Limitations" column, remove "046573" wherever it occurs and in its place add "054771".

§ 558.258 [Amended]

■ 11. In § 558.258, in the tables in paragraphs (e)(2)(vi) and (vii), in the "Limitations" column and in the "Sponsor" column, remove "046573" and in its place add "054771"; and in paragraphs (e)(2)(ii) through (v), in the "Limitations" column, remove "000009" and in its place add "054771".

§ 558.305 [Amended]

■ 12. In § 558.305, in paragraph (b), remove "046573" and in its place add "054771"; and in the table in paragraph (e) in the "Sponsor" column, remove "046573" wherever it occurs and in its place add "054771".

§ 558.311 [Amended]

■ 13. In § 558.311, in paragraphs (b)(1) through (4) and (6) and (7), remove "046573" and in its place add "054771"; in the table in paragraph (e)(1), in the "Limitations" column and in the "Sponsor" column, remove "046573" wherever it occurs and in its place add "054771", in the "Limitations" column, remove "000009" where it occurs and in its place add "054771", in the "Limitations" column, remove "000004" where it occurs and in its place add "054771"; and in paragraphs (e)(2)(v), (e)(3)(v), and (e)(4)(v), remove "046573" and in its place add "054771".

§ 558.325 [Amended]

■ 14. In § 558.325, in paragraphs (a)(1) and (c)(3)(i), remove "000009" and in its place add "054771"; and in the tables in paragraphs (d)(1) and (2), in the "Sponsor" column, remove "000009" wherever it occurs and in its place add "054771".

§ 558.340 [Amended]

■ 15. In § 558.340, in paragraph (a), remove "046573" and in its place add "No. 054771".

§ 558.342 [Amended]

■ 16. In § 558.342, in paragraph (b)(1), remove "000009" and in its place add "054771"; in the table in paragraph (e)(1), in the "Limitations" column and in the "Sponsor" column, remove "000009" wherever it occurs and in its place add "054771", and in the "Limitations" column, remove "046573" wherever it occurs and in its place add "054771".

§ 558.348 [Amended]

■ 17. In § 558.348, in paragraph (a), remove "000009" and in its place add "No. 054771".

§ 558.355 [Amended]

■ 18. In § 558.355, in paragraphs (b)(8), (b)(9), and (b)(11), remove "046573" and in its place add "054771"; in paragraphs (f)(1)(iii)(*b*), (f)(1)(iv)(*b*), (f)(1)(v)(*b*), (f)(1)(vii)(*b*), (f)(1)(xiv)(*b*), (f)(1)(xxv)(*b*), (f)(1)(xxix)(*b*), (f)(1)(xxx)(*b*), (f)(2)(ii)(*b*), (f)(2)(iii)(*b*), (f)(4)(ii)(*b*), (f)(4)(iii)(*b*), (f)(4)(iv)(*b*), (f)(4)(v)(*b*), remove "046573" and in its place add "054771"; and revise paragraph (f)(1)(i)(*b*) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(*b*) *Limitations.* Feed continuously as the sole ration. In the absence of coccidiosis, the use of monensin with no withdrawal period may limit feed intake resulting in reduced weight gain. Do not feed to laying chickens.

* * * * *

§ 558.363 [Amended]

■ 19. In § 558.363, in paragraphs (a)(6) and (a)(7), remove "046573" and in its place add "054771"; in paragraph (d)(1)(vi)(B) and (d)(1)(x)(B), remove "046573" and in its place add "054771".

§ 558.364 [Amended]

■ 20. In § 558.364, in paragraph (a), remove "000009" and in its place add "054771"; and in the table in paragraph (d), in the "Sponsor" column, remove "000009" wherever it occurs and in its place add "054771".

§ 558.366 [Amended]

■ 21. In § 558.366, in the table in paragraph (d), in the "Limitations" column and in the "Sponsor" column, remove "046573" wherever it occurs and in its place add "054771" and in paragraph (d), in the "Limitations" column, remove "000009" wherever it occurs and in its place add "054771".

§ 558.369 [Amended]

■ 22. In § 558.369, in paragraph (a), remove "046573" and in its place add "054771".

§ 558.415 [Amended]

■ 23. In § 558.415, redesignate paragraphs (b) and (c) as paragraphs (c) and (d); revise paragraph (a); and add new paragraph (b) to read as follows:

§ 558.415 Novobiocin.

■ (a) *Specifications.* Type A medicated article containing 25 grams of novobiocin activity per pound.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

* * * * *

■ 24. In § 558.430, redesignate paragraphs (b) and (c) as paragraphs (c) and (d); revise paragraph (a); and add new paragraph (b) to read as follows:

§ 558.430 Nystatin.

(a) *Specifications.* Type A medicated article containing 20 grams of nystatin activity per pound.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

* * * * *

§ 558.460 [Amended]

■ 25. In § 558.460, in paragraph (b), remove "046573" and in its place add "054771"; and in the table in paragraph (d)(1)(i), in the "Sponsor" column, remove "000069, 046573" and in its place add "054771, 066104"; and in paragraphs (d)(1)(ii) and (iii), in the "Sponsor" column, remove "Do." and in its place add "054771, 066104".

§ 558.464 [Amended]

■ 26. In § 558.464, in paragraphs (a)(1) and (2), remove "000069" and in its place add "054771".

§ 558.485 [Amended]

■ 27. In § 558.485, in paragraph (b)(7), remove "000069 and 017135" and in its place add "017135 and 054771"; and in paragraph (e)(1)(xii)(C), remove "000009" and in its place add "054771".

§ 558.500 [Amended]

■ 28. In § 558.500, in paragraphs (e)(2)(viii) and (x), in the "Limitations" column, remove "000009" and in its place add "054771".

§ 558.515 [Amended]

■ 29. In § 558.515, in paragraph (a), remove "046573" and in its place add "054771"; in the table in paragraph (d), in the "Sponsor" column, remove "046573" wherever it occurs and in its place add "054771" and in the "Sponsor" column, remove "000009" where it occurs and in its place add "054771".

§ 558.550 [Amended]

■ 30. In § 558.550, in paragraphs (b)(1), (d)(1)(iii)(*c*), (d)(1)(vi)(*c*), (d)(1)(vii)(*c*), (d)(1)(xvi)(*c*), (d)(1)(xx)(C), (d)(1)(xxi)(C), (d)(1)(xxii)(B), (d)(1)(xxiii)(*b*), (d)(3)(ii)(B), (d)(3)(iii)(B), (d)(3)(v)(B), (d)(4)(i)(*b*), remove "046573" and in its place add "054771"; and in paragraph (d)(1)(xiii)(*c*), remove "000009" and in its place add "054771".

§ 558.555 [Amended]

■ 31. In § 558.555, in paragraphs (d)(2), (d)(3), (d)(4), and (d)(8), in the "Limitations" column, remove "046573" and in its place add "054771".

§ 558.575 [Amended]

■ 32. In § 558.575, in paragraph (a)(1), remove "046573" and in its place add "054771".

§ 558.582 [Amended]

■ 33. In § 558.582, in paragraph (a), remove "046573" and in its place add "054771".

§ 558.600 [Amended]

■ 34. In paragraph (e)(1)(iii) of § 558.600, in the "Indications for use" column, remove "susceptible" wherever it occurs and in its place add "sensitive"; in the "Limitations" column, add "Use as only source of tiamulin."; and in the "Limitations" column, remove "046573" and in its place add "054771".

§ 558.625 [Amended]

■ 35. In § 558.625, remove and reserve paragraphs (b)(57) and (83); in paragraph (b)(54), remove "046573" and in its place add "054771"; and add paragraph (b)(10) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(10) To No. 012286: 0.4, 0.8, and 1.6 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 20, 40, and 100 grams per pound, paragraphs (f)(1)(i) through (vi) of this section.

* * * * *

§ 558.630 [Amended]

■ 36. In § 558.630, in paragraph (b)(5), remove "046573" and in its place add "054771".

§ 558.635 [Amended]

■ 37. In § 558.635, in paragraph (a)(2), remove "046573" and in its place add "054771".

§ 558.680 [Amended]

■ 38. In § 558.680, in paragraph (b), remove "046573" and in its place add "054771".

Dated: February 28, 2014.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2014–04937 Filed 3–10–14; 8:45 am]

BILLING CODE 4160–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

RIN 3046–AA58

Waivers of Rights and Claims in Settlement of a Charge or Lawsuit Under the Age Discrimination in Employment Act; Corrections

AGENCY: Equal Employment Opportunity Commission.

ACTION: Correcting Amendments.

SUMMARY: The EEOC is correcting a cross-reference in its regulation concerning the requirements for a valid waiver of an individual's right to file a lawsuit under the Older Workers Benefit Protection Act (OWBPA) amendments to the Age Discrimination in Employment Act (ADEA). This is a technical correction.

DATES: *Effective Date:* March 11, 2014.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, or Raymond L. Peeler, Senior Attorney-Advisor, at (202) 663–4640 (voice) or (202) 663–7026 (TTY). Requests for this document in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY), or the Publications Information Center at 1–800–669–3362 (toll free).

SUPPLEMENTARY INFORMATION:

Background

In the Older Workers Benefit Protection Act of 1990 (OWBPA), Congress established requirements for the knowing and voluntary release of claims under the Age Discrimination in Employment Act (ADEA).[1] The OWBPA set basic requirements for all waivers of ADEA rights, and it imposed extra requirements when employers sought such waivers in connection with an exit incentive or group termination program. To implement the OWBPA, the EEOC issued a final negotiated rule at 29 CFR 1625.22 in 1998.[2]

Need for Correction

The EEOC now corrects a cross-reference in 29 CFR 1625.22(g)(3), the provision that states the basic requirements for waiving ADEA rights when settling an ADEA charge or lawsuit. Where subsection (g)(3) should cross reference the rule's "knowing and voluntary" requirements applicable to all ADEA waivers, it instead references the rule's additional requirements for *group termination programs.* Therefore, the EEOC now replaces the incorrect language in 29 CFR 1625.22(g)(3) ("set out in paragraph (f) of this section"), with language referencing the rule's general waiver requirements ("set out in paragraphs (b), (c), and (d) of this section.").

Changes to Authority Citation

This rule also contains several changes to the existing authority citation for 29 CFR Part 1625. Some of these changes update existing citations to comply with **Federal Register** formatting conventions. Others streamline and consolidate several references to the Age Discrimination in Employment Act. The revisions also add Executive Order 12067 due to its discussion of the EEOC's leadership role in age discrimination in employment and the EEOC's responsibilities with respect to federal regulations concerning employment discrimination.

Retrospective Regulatory Review

Although the EEOC's rulemaking on waivers of rights and claims under the

[1] Public Law 101–433, 104 Stat. 978 (codified at 29 U.S.C. 626(f)).

[2] 63 FR 30624, 30631 (June 5, 1998) (EEOC Final Rule for Waiver of Rights and Claims under the ADEA).

ADEA is not currently a priority for regulatory review, the Commission is taking this action, consistent with the EEOC Plan for Retrospective Analysis of Existing Rules,[3] based on stakeholder input and efforts to enhance clarity in the EEOC's regulations.[4]

Regulatory Procedures

The Commission finds that public notice-and-comment on this rule is unnecessary, because the revision makes no substantive change; it merely corrects an internal cross-referencing error. The rule is therefore exempt from the notice-and-comment requirements of 5 U.S.C. 553(b) under 5 U.S.C. 553(b)(B). This technical correction also is not "significant" for purposes of Executive Order 12866, as reaffirmed by E.O. 13563, and therefore is not subject to review by Office of Management and Budget.

Regulatory Analysis

Since this technical correction contains no substantive changes to the law, EEOC certifies that it contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35), it requires no formal cost-benefit analysis pursuant to E.O. 12866, it creates no significant impact on small business entities subject to review under the Regulatory Flexibility Act, and it imposes no new economic burden requiring further analysis under the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This correction is defined as a rule under the Congressional Review Act, but not as a major rule. As a result, it was provided to Congress and the General Accountability Office pursuant to the requirements of 5 U.S.C. 801 as interpreted by Office of Management and Budget Memorandum M–99–13.

List of Subjects in 29 CFR Part 1625

Advertising, Age, Employee benefit plans, Equal employment opportunity, and Retirement.

For the reasons stated in the preamble, the Equal Employment Opportunity Commission amends 29 CFR Part 1625 as follows:

[3] A copy of the EEOC's Final Plan for Retrospective Analysis of Existing Regulations is available at *http://www.eeoc.gov/laws/regulations/retro_review_plan_final.cfm* (last visited Oct. 5, 2012).

[4] This error was brought to the EEOC's attention by attorneys inquiring about the requirements for settling a charge of age discrimination.

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

■ 1. The authority citation for 29 CFR Part 1625 is revised to read as follows:

Authority: 29 U.S.C. 621–634; 5 U.S.C. 301; Pub. L. 99–502, 100 Stat. 3342; Secretary's Order No. 10–68; Secretary's Order No. 11–68; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807; Executive Order 12067, 43 FR 28967.

■ 2. Revise § 1625.22(g)(3) to read as follows:

§ 1625.22 Waivers of rights and claims under the ADEA.

* * * * *

(g) * * *

(3) The standards set out in paragraphs (b), (c), and (d) of this section for complying with the provisions of section 7(f)(1)(A)–(E) of the ADEA also will apply for purposes of complying with the provisions of section 7(f)(2)(A) of the ADEA.

* * * * *

Dated: March 5, 2014.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2014–05274 Filed 3–10–14; 8:45 am]

BILLING CODE 6570–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4006, 4007, and 4047

RIN 1212–AB26

Premium Rates; Payment of Premiums; Reducing Regulatory Burden

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Corporation (PBGC) is making its premium rules more effective and less burdensome. Based on its regulatory review under Executive Order 13563 (Improving Regulation and Regulatory Review), PBGC proposed to simplify due dates, coordinate the due date for terminating plans with the termination process, make conforming and clarifying changes to the variable-rate premium rules, give small plans more time to value benefits, provide for relief from penalties, and make other changes. PBGC recently finalized the part of the proposal that eliminated the early payment requirement for large plans' flat-rate premiums. This action finalizes the rest of the proposal.

DATES: Effective April 10, 2014. The changes are generally applicable for plan years starting on or after January 1, 2014. See **Applicability** later in the preamble for details.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Assistant General Counsel for Regulatory Affairs (*klion.catherine@pbgc.gov*), or Deborah C. Murphy, Deputy Assistant General Counsel for Regulatory Affairs (*murphy.deborah@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Executive Summary—Purpose of the Regulatory Action

This rulemaking is needed to make PBGC's premium rules more effective and less burdensome. The rule simplifies and streamlines due dates, coordinates the due date for terminating plans with the termination process, makes conforming changes to the variable-rate premium rules, clarifies the computation of the premium funding target, reduces the maximum penalty for delinquent filers that self-correct, and expands premium penalty relief.

PBGC's legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4007 of ERISA, which gives PBGC authority to set premium due dates and to assess late payment penalties.

Executive Summary—Major Provisions of the Regulatory Action

Due Date Changes

In recent years, premium due dates have generally depended on plan size. Large plans have paid the flat-rate premium early in the premium payment year and the variable-rate premium later in the year. Mid-size plans have paid both the flat- and variable-rate premiums by that same later due date. Small plans have paid the flat- and variable-rate premiums in the following year. PBGC recently eliminated the early due date for large plans' flat-rate premiums. PBGC is now completing the process of simplifying the due-date rules by making small plans' premiums due at the same time as large and mid-size plans' premiums. However, because of a transition rule that gives small

plans more time to adjust to the new provisions, the due dates will not be completely uniform until 2015. The following table shows how due dates differ under the previous and the new due date rules for calendar-year plans for 2014 (the transition year) and 2015 (the year full uniformity is achieved).

Plan size	2014			2015		
	Old rules		New rules	Old rules		New rules
	Flat-rate premium	Variable-rate premium	Entire premium	Flat-rate premium	Variable-rate premium	Entire premium
Large	2/28/2014	10/15/2014	10/15/2014	2/28/2015	10/15/2015	10/15/2015
Mid-size	10/15/2014	10/15/2014	10/15/2014	10/15/2015	10/15/2015	10/15/2015
Small	4/30/2015	4/30/2015	2/15/2015	4/30/2016	4/30/2016	10/15/2015

For the special case of a plan terminating in a standard termination, the final premium might come due months after the plan closed its books and thus be forgotten. Correcting such defaults has been inconvenient for both plans and PBGC. To forestall such problems, PBGC is setting the final premium due date no later than the date when the post-distribution certification is filed. PBGC is also making conforming changes to other special case due date rules.

Variable-Rate Premium Changes

Some small plans determine funding levels too late in the year to be able to use current-year figures for the variable-rate premium by the new uniform due date. To address this problem, PBGC is providing that small plans generally use prior-year figures for the variable-rate premium (with a provision for opting to use current-year figures).

To facilitate the due date changes, a plan will generally be exempt from the variable-rate premium for the year in which it completes a standard termination or (if it is small) for the first year of coverage.

In response to inquiries from pension practitioners, PBGC is clarifying the computation of the premium funding target for plans in "at-risk" status for funding purposes.

Penalty Changes

PBGC assesses late premium payment penalties at 1 percent per month for filers that self-correct and 5 percent per month for those that do not. The differential is to encourage and reward self-correction. But both penalty schedules have had the same cap—100 percent of the underpayment—and once the cap was reached, the differential disappeared. To preserve the self-correction incentive and reward for long-overdue premiums, PBGC is reducing the 1-percent penalty cap from 100 percent to 50 percent.

PBGC is also codifying in its regulations the penalty relief policy for payments made not more than seven days late that it established in a **Federal Register** notice in September 2011 and is giving itself more flexibility in exercising its authority to waive premium penalties.

Other Changes

PBGC is also amending its regulations to accord with the Moving Ahead for Progress in the 21st Century Act and the Bipartisan Budget Act of 2013 and to avoid retroactivity of PBGC's rule on plan liability for premiums in distress and involuntary terminations.

Background

PBGC administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA sections 4006 and 4007, plans covered by the program must pay premiums to PBGC. PBGC's premium regulations—on Premium Rates (29 CFR part 4006) and on Payment of Premiums (29 CFR part 4007)—implement ERISA sections 4006 and 4007.

On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. In response to and in support of the Executive Order, PBGC on August 23, 2011, promulgated its Plan for Regulatory Review,[1] noting several regulatory areas—including premiums—for immediate review.

PBGC reviewed its premium regulations and identified a number of ways to simplify and clarify the regulations, reduce burden, provide penalty relief, and generally make the regulations work better. On July 23, 2013 (at 78 FR 44056), PBGC published a proposed rule to replace the system of three premium due dates (based on plan size and premium type) with a single due date corresponding to the Form 5500 extended due date, to coordinate the due date for terminating plans with the termination process, to make conforming and clarifying changes to the variable-rate premium rules, to provide for relief from penalties, and to make other changes.

PBGC received comments on its proposed rule from six commenters—two employer associations, two associations of pension practitioners, an actuarial firm, and an individual actuary. All of the commenters approved of the proposal, and one specifically urged that it be made effective for 2014. The commenters also had suggestions for additional changes PBGC might make in its premium regulations or procedures. Those suggestions are discussed below with the topics they relate to. In response to the comments, PBGC has made changes both to the regulatory text and to its premium forms and instructions. Changes have also been made to reflect adoption of the Bipartisan Budget Act of 2013 and a minor due-date simplification that PBGC introduced on its own initiative (also discussed below).

Because the proposed change in the large-plan flat-rate due date was time-sensitive (and received only positive comments from the public), PBGC expedited a final rule limited to that change (and related changes in penalty provisions). That final rule was published January 3, 2014 (at 79 FR 347).

Current and Historical Context

There are two kinds of annual premiums.[2] The flat-rate premium is based on the number of plan participants, determined as of the participant count date. The participant count date is generally the last day of the plan year preceding the premium payment year; in some cases, however (such as for plans that are new or are

[1] See *http://www.pbgc.gov/documents/plan-for-regulatory-review.pdf.*

[2] There is also a termination premium, which is unaffected by this final rule.

involved in certain mergers or spinoffs), the participant count date is the first day of the premium payment year. The variable-rate premium (which applies only to single-employer plans) is based on a plan's unfunded vested benefits (UVBs)—the excess of its premium funding target over its assets. The premium funding target and asset values are determined as of the plan's UVB valuation date, which is the same as the valuation date used for funding purposes. In general, the UVB valuation date is the beginning of the plan year, but some small plans (with fewer than 100 participants) may have UVB valuation dates as late as the end of the year.

Section 4007 of ERISA authorizes PBGC to set premium due dates and assess penalties for failure to pay premiums timely. Beginning in 1999,[3] PBGC set the variable-rate premium due date for plans of all sizes as 9½ calendar months after the beginning of the premium payment year (October 15 for calendar-year plans). This was done so that the due date would correspond with the extended due date for the annual report for the prior year that is filed on Form 5500. Coordination of the premium and Form 5500 due dates promotes consistency and simplicity and avoids confusion and administrative burden. In 2008, however, to conform to changes made by the Pension Protection Act of 2006 (PPA 2006), small-plan due dates were extended to 16 months after the beginning of the premium payment year (April 30 of the following year for calendar-year plans).

Flat-rate premiums for large plans (those with 500 or more participants) were previously due two calendar months after the beginning of the premium payment year (the end of February for calendar-year plans). PBGC recently eliminated that early due date, and large plans' flat-rate premiums are now due at the same time as variable-rate premiums.

Under ERISA section 4007, premiums accrue until plan assets are distributed in a standard termination or a failing plan is taken over by a trustee. A plan undergoing a standard termination is exempt from the variable-rate premium for any plan year after the year in which the plan's termination date falls.[4]

Late payment penalties accrue at the rate of 1 percent or 5 percent per month of the unpaid amount, depending on whether the underpayment is "self-corrected" or not. Self-correction refers to payment of the delinquent amount before PBGC gives written notice of a possible delinquency. Penalties are capped by statute at 100 percent of the unpaid amount.

The changes to the premium regulations affecting due dates, variable-rate premiums, and penalties are discussed below in that order.

New Due Date Rules

Uniform Due Dates for Plans of All Sizes

PBGC is setting the premium due date for small plans as 9½ months after the beginning of the premium payment year (subject to a one-year transition rule, discussed below). This date corresponds with the extended due date for the annual report for the prior year that is filed on Form 5500. (For calendar-year plans, the due date will be October 15.) Having recently made the same change for large plans' flat-rate premium due date, PBGC has now eliminated the system of three premium due dates tied to plan size and premium type and replaced it with a uniform due date system for both flat- and variable-rate premiums of plans of all sizes.

For small plans, the new unified due date raises a timing issue. Unlike large plans, which by statute must value benefits at the beginning of the year, small plans are permitted by statute to value benefits as late as the end of the year and thus might be unable to calculate variable-rate premiums by a due date within the year using current-year data. (For example, a small calendar-year plan that valued benefits as of December 31 could not determine the premium by the preceding October 15.) PBGC's solution to this timing problem is for small plans to determine the variable-rate premium using data, assumptions, and methodology for the year before the premium payment year. (This solution also accommodates situations where (although timely action might be possible) sponsors prefer to put off giving plan actuaries information for plan valuations until after other close-of-the-year matters are dealt with.) A more detailed discussion of this provision is set forth below under the heading *"Look-Back" Rule for Small Plans,* below.

These changes mean that plan consultants can do all premium and Form 5500 filing chores at one time, once a year. PBGC will receive all premium filings for each plan year at one time, specific to that year, and will be able to process a plan's entire annual premium in a single operation. Going from three due dates to one will be simpler for all concerned—even for mid-size plans, whose due date is not changing. Simpler rules mean shorter and simpler filing instructions—instructions that PBGC must update annually and that plan administrators of plans of all sizes must read, understand, and follow. Less complexity means less chance for mistakes and the time and expense of correcting them. Moving to one uniform due date will also simplify PBGC's premium processing systems and save PBGC money on future periodic changes to those systems (because it is less expensive to modify simpler systems).

In short, PBGC believes that this change will produce a significant reduction in administrative burden for both plans and PBGC. It will also shift the earnings on premium payments between plans and PBGC for the time between the old and new due dates, but overall, plans will gain.[5]

However, shifting immediately from the old to the new due date schedule would result in two premium due dates for small plans in the transition year: using a calendar-year plan as an example, the 2013 premium would be due at the end of April 2014, and the 2014 premium would be due in mid-October 2014.[6] This "doubling up" of premiums for one year prompted one commenter to express concern about potential cash flow problems for some small plan sponsors and to recommend that PBGC permit payment of the transition-year premium in three annual installments. Another commenter requested transition rules generally.

Although PBGC is not persuaded that the due date change poses a significant cash flow problem for most small plan sponsors (in part because premiums can be paid from plan assets), the fact that a comment raised this issue indicates that it may exist in some cases. But PBGC believes that a regime of installment payments is more complex than is necessary to deal with the problem. Instead, PBGC is addressing this concern by extending the transition year due date by four months (from October 15, 2014, to February 15, 2015, for calendar-year plans) for small plans that would otherwise have two premium due dates in the transition year. With this one-time extension, a small plan's transition-year premium and its premiums for the preceding and following plan years can be spaced about equally over a 17½-month period (from April 30, 2014, to October 15,

[3] See PBGC final rule at 63 FR 68684 (Dec. 14, 1998).

[4] See *Exemption for Standard Terminations,* below.

[5] See *Uniform Due Dates* under Executive Orders 12866 and 13563, below, for detailed discussion of costs and benefits.

[6] In the transition year for the old due date system, small plans made no premium payments.

2015, for calendar-year plans), with about eight or nine months between each two payments.[7]

In addition, a 60-day penalty waiver is available in cases of financial hardship,[8] which could extend the 17½-month period to 19½ months. And case-by-case relief from late-payment penalties is also available. In combination with the transition-year due date extension, PBGC believes these provisions adequate to relieve any cash-flow problems caused by transition-year due-date bunching.

Terminating Plans' Due Date

The foregoing discussion focuses on the normal due dates for annual premiums. There are also special due date rules for new and newly covered plans and for plans that change plan year. But there has been no special due date provision for terminating plans—and yet such plans have posed a special problem, because their final premium due date might come months after all benefits were distributed and their books were closed. Although the standard termination rules require that provision be made for PBGC premiums,[9] PBGC's experience has been that once the sometimes-difficult process of distributing benefits was over—and with the premium due date often months in the future—plan administrators might simply forget about premiums and consider their work done. Months later, when PBGC contacted them after they failed to make the final premium filing, it was typically an inconvenience, and sometimes an annoyance, to go back to (or reconstruct) the records to calculate and pay premium—and interest and penalties, because the due date had been missed.

With a view to ensuring that final-year premiums are routinely paid for plans winding up standard terminations, PBGC is changing the due date for such plans to bring it within the standard termination timeline.[10] The final event in the standard termination timeline is the filing of the post-distribution certification under § 4041.29 of PBGC's regulation on Termination of Single-Employer Plans (29 CFR part 4041). The plan administrator of a terminating plan must file the certification (on PBGC Form 501) within 30 days after the last benefit distribution date, but no late filing penalty is assessed if the filing is no later than 90 days after the distribution deadline under § 4041.28(a) of the termination regulation (the "penalty-free zone"). The proposed rule provided that the premium due date for a terminating plan's final year would be the earliest of (1) the normal premium due date, (2) the end of the penalty-free zone, or (3) the date when the post-distribution certification is actually filed. In the interest of simplicity, the final rule eliminates the second of these three dates and sets the due date for such final filings as the earlier of (1) the normal premium due date and (2) the date when the post-distribution certification is actually filed.

Thus plans will in effect have at least 90 days after distributions are complete to make the final year premium filing. And since in addition the normal unified premium due date is nine-and-a-half months after the plan year begins, only plans closing out in the first six-and-a-half months of the final year will face an accelerated premium deadline. For plans closing out in the last five-and-a-half months of the final year, the normal premium due date will come before the end of the penalty-free zone.

The 90 days (or more) between the completion of final distributions and the accelerated premium deadline will also give a plan at least that much time to determine the flat-rate premium (which is based on the participant count at the end of the prior year). For a terminating plan, counting participants should be relatively easy. Because it is in the process of providing benefits for (or for the survivors of) each participant, a terminating plan must necessarily have a roster of all participants. By simply subtracting from the roster the participants who received distributions before the participant count date, the plan can determine the participant count.

Computing a variable-rate premium in three months might be more challenging, but under this final rule it will not be necessary. If the termination date for a standard termination is before the beginning of the final plan year, the regulation already provides an exemption from the variable-rate premium for the final year. PBGC is expanding this exemption to apply to a plan's final year, even if the termination date comes during that year.[11] Thus, the final-year premium will be flat-rate only. This change will provide relief for the significant number of plans that close out in the same year in which their termination dates fall (as indicated by PBGC data on the number of plans that pay variable-rate premiums for the final year).

Advancing the premium due date for some terminating plans will shift earnings on the premiums from those plans to PBGC. But some of those plans should enjoy reduced administrative expenses (and possibly save on late charges) because the advanced deadline will prompt them to prepare premium filings while files are open for paying benefits. And some plans will avoid paying a final-year variable-rate premium under PBGC's expansion of the exemption for plans doing standard terminations.[12] On balance, PBGC expects there to be no significant net cost to plans and significant administrative benefits for PBGC.

One commenter recommended that the new terminating plan due date be extended by 30 days so that the final-year premium filing would not have to be made at the same time as the post-distribution certification (Form 501), citing the time necessary to prepare Form 501. PBGC believes that the simplicity of making the final flat-rate-only premium filing, as discussed above, suggests that plan administrators will typically be able to avoid simultaneous filing of the premium and post-distribution certification forms by simply filing the premium form before the deadline. If circumstances make that difficult, the seven-day penalty waiver (see *Codification of Seven-Day Penalty Waiver Rule,* below) will provide relief from late payment penalties. If, in an unusual situation, preparation of the premium filing takes more than a week, case-by-case relief from late-payment penalties is also available. (See *Expansion of Penalty Waiver Authority,* below).

New Plan Due Date Modifications

As noted above, the premium payment regulation already includes a special due date provision for new and newly covered plans. PBGC is making two technical modifications to this provision in support of the primary changes in this rulemaking.

The first modification is to restore—for newly covered plans—the alternative due date of 90 days after title IV coverage begins. This alternative was available before the PPA 2006

[7] A calendar-year filer that wanted to pay the second premium halfway between the due dates for the first and third premiums would pay it in late January 2015. The extension to mid-February provides some leeway.

[8] The waiver is available if timely payment of a premium would cause substantial hardship but payment can be made within 60 days. See section 4007(b) of ERISA and § 4007.8(b) of the premium payment regulation.

[9] See 29 CFR 4041.28(b).

[10] See p. 3 of the Standard Termination Filing Instructions, *http://www.pbgc.gov/documents/500_instructions.pdf.*

[11] See *Final-Year Variable-Rate Premium Exemption,* below.

[12] See *Final-Year Due Date* under **Executive Orders 12866 and 13563,** below, for detailed discussion of costs and benefits.

amendments to the premium regulations, but those amendments set newly covered plans' normal due date four months after the end of the premium payment year—and thus more than 90 days after the latest possible coverage date. This made the alternative due date superfluous, and it was removed. Now that PBGC is returning the normal due date to 2½ months before the end of the plan year, it will again be possible for a plan's coverage date to be too late in the premium payment year to make filing by the normal due date feasible. Hence the restoration of this alternative due date.

The second modification is to provide a due date extension for a subset of plans that are excluded from the normal rule that small plans base the variable-rate premium on prior-year data.[13] This subset consists of new small plans resulting from non-*de minimis* consolidations and spinoffs. These plans will have to pay a variable-rate premium based on current-year data.[14] But being small, a plan in this subset might have a UVB valuation date too late in the premium payment year to enable the plan to meet the normal filing deadline. This second modification to the new-plan due date provision extends the due date for such plans until 90 days after the UVB valuation date, to give them time to calculate the variable-rate premium.[15]

One commenter recommended that PBGC adopt a very different due date rule for new plans and some newly covered plans. The suggestion was basically to provide for filing by the following year's normal due date in situations where one of the 90-day extension rules would otherwise apply. The commenter indicated that the suggested change would not apply to newly covered plans that had previously gone in and out of coverage, but even without this complication, PBGC is not persuaded that the change would be an improvement. The commenter argued that the existing rule is likely to result in missed filings, but the 90-day extension has been in the regulation for years, and no significant problems with it have come to PBGC's attention. Thus PBGC's concern would be that changing this long-standing pattern of due date extensions would be more likely to cause than cure problems. Furthermore, the commenter's recommendation for the new and newly covered plan due date would put plans in the position of owing two years' premiums on the same day, a result that the same commenter was concerned with in connection with the transition to the new unified due date for small plans (see *Uniform Due Dates for Plans of All Sizes*, above). Accordingly, PBGC is not adopting this suggestion.

[13] See *"Look-Back" Rule for Small Plans*, below.

[14] See *First-Year Variable-Rate Premium Exemption*, below.

[15] To give any plan with a deferred due date adequate time to reconcile an estimated variable-rate premium, the reconciliation date keys off the due date rather than the premium payment year commencement date. For a normal due date, the reconciliation date remains the same.

Variable-Rate Premium Changes

"Look-Back" Rule for Small Plans

As noted in the discussion of the unified due date above, some small plans value benefits too late in the premium payment year to be able to compute variable-rate premiums by the new uniform due date, which is 2½ months before the end of the premium payment year. (As also noted, some small-plan sponsors prefer to defer plan valuation matters until after year-end.) To solve this problem, small plans will determine UVBs, on which variable-rate premiums are based, by looking back to data for the prior year.[16] Because a new plan does not have a prior year to look back to, new small plans will generally be exempt from the variable-rate premium. This new variable-rate premium exemption is discussed in more detail under *First-Year Variable-Rate Premium Exemption* below.

The term "UVB valuation year" is used in the text of the regulation to mean the year that the plan administrator looks to for the UVBs used to calculate the variable-rate premium for the premium payment year. As a general rule, the UVB valuation year is the plan year preceding the premium payment year for small plans, and is the premium payment year for other plans. (Using the term "UVB valuation year" avoids the need to have the regulation describe two versions of all the UVB determination rules—one version for small plans and a second version for the others.)

This "look-back" rule applies only to the variable-rate premium, not to the flat-rate premium. The participant count on which the flat-rate premium is based is determined not as of the UVB valuation date but as of the participant count date. This date is still the same as it was before PPA 2006, when small plans' premium due date was the historical date that this final rule reinstates for them (October 15 for calendar-year plans). From the perspective of the flat-rate premium, the final rule returns small plans to their situation before PPA 2006, and no special accommodation is needed.

[16] This revives a concept that was in the premium regulations before PPA 2006: the alternative calculation method, which permitted plans to determine UVBs by "rolling forward" prior-year data using a set of complex formulae. No "rolling forward" or other modification of prior-year data is involved in the approach that PBGC is now taking.

Plans Subject to Look-Back Rule

In general, the look-back rule applies to any plan with a participant count for the premium payment year of up to 100, or a funding valuation date that is not at the beginning of the premium payment year. Thus the "small plans" to which the look-back rule applies are a slightly different group, compared to the "small plans" whose premium due date under the PPA 2006 amendment is four months after the end of the plan year. The difference in approach reflects the difference in the implications of plan size under the old and new premium payment regulations. Heretofore, all plans had the same UVB valuation year, and plan size determined due date; under the amended regulation, all plans have the same due date, and plan size generally determines UVB valuation year (*i.e.*, whether the look-back rule applies).

Until now, the regulation based plan size on the participant count for the year before the premium payment year, so that plans could determine well in advance whether they were large and thus required to pay the flat-rate premium early in the year. New plans (which have no prior year) were treated as small, which meant that they paid their first-year premiums according to the small-plan payment schedule, regardless of size. Newly covered plans were grouped with new plans. If a new or newly covered plan in fact covered more than 100 participants, it enjoyed the luxury of the delayed small-plan due date for its first year, but the most PBGC could be said to have "lost" was 6½ months' interest on the premium.

Under the new rules, in contrast, if a new plan covering more than 100 participants were treated as small, PBGC would lose not just interest but (because of the new variable-rate premium exemption for new small plans) the whole variable-rate premium. For some new plans—particularly those created by consolidation or spinoff—this could be a very substantial sum. To avoid this unintended consequence of the look-back rule, which is meant for plans that are genuinely small, the small-plan category is based on the participant count for the premium payment year rather than the preceding year. This change is possible because PBGC's elimination of the early flat-rate premium due date for large plans has eliminated the pressure to determine plan size early in the premium payment

year. By the time a plan needs to know whether it is small (and thus subject to the look-back rule), it will have had plenty of time to determine its current-year participant count.

Changing from the prior year's to the current year's participant count brings PBGC's definition of "small plan" into closer alignment with the category of plans eligible by statute to use non-first-day-of-the-year valuation dates.[17] The somewhat complex statutory provision is based on participant-count data from the prior year,[18] and PBGC's participant count date for the current year is generally the last day of the prior year. To improve the correspondence with the statutory provision, PBGC is changing the small-plan numerical size range from fewer than 100 participants to 100 or fewer participants (the numerical size range of plans permitted by statute to use non-first-day-of-the-plan-year valuation dates).

As a general matter, PBGC wants every plan that in fact has a non-first-day-of-the-plan-year valuation date to be included in the definition of "small plan" that the look-back rule applies to. But because of the complexity of the statutory category of plans eligible to use non-first-of-the-year valuation dates, PBGC has not matched its "small plan" definition closely to every aspect of that statutory category. Instead, PBGC is combining a simple "small plan" concept with a "catch-all" clause.[19] The look-back rule thus applies to any plan that has a participant count of 100 or fewer for the premium payment year or that in fact has a funding valuation date for the premium payment year that is not the first day of the year.[20]

One commenter argued that small plans with first-day-of-the-plan-year valuation dates should be allowed to opt out of the look-back rule. The commenter noted that such plans would have plenty of time to compute the variable-rate premium based on a UVB valuation date in the premium payment year. Because the same can be said of a plan whose valuation date is the second day of the plan year, or indeed any day up to shortly before the due date (depending on the plan actuary's diligence), equity would seem to suggest that the proposed scope of the option would be too narrow and that the proposal should be evaluated on the assumption that it would apply to a much larger category of plans.

The commenter supported the proposal to permit opt-outs by observing that year-old data would not include prior-year contributions made to improve plans' funded status. PBGC is aware that some small-plan sponsors make additional contributions to reduce the variable-rate premium and that under the look-back rule, reductions would come a year later than if the look-back rule did not apply. Other correspondence and comments made at meetings have noted the importance of this opportunity for some small-plan sponsors (especially in view of the recent increase in the variable-rate premium[21]). While PBGC doesn't know how many such plan sponsors there are, evidence suggests that there may be enough to warrant the introduction of some flexibility in the application of the look-back rule.

Accordingly, to accommodate these concerns, the final rule contains a special exception allowing for a procedure to be provided in PBGC's premium instructions whereby a small plan may opt out of the look-back rule and instead base the variable-rate premium on current-year UVBs. Details will be incorporated in the premium instructions and may be modified over time in response to experience or suggestions from the public.[22]

Effects of Due Date and Look-Back Rules

PBGC's look-back rule has the advantage that it permits use of a more convenient premium due date, and it avoids the use of complicated mathematical manipulations aimed at making the prior-year figures more reflective of current conditions. For small plans, the combination of the new due date and the look-back rule means not only that the premium due date aligns with the Form 5500 due date (as typically extended), but that the due dates that align correspond to the same valuation. The following table illustrates, for filings due October 15, 2016,[23] how the alignment of valuations and due dates for small plans differ from the alignment for other plans.

	Premium payment year	UVB valuation year	5500 valuation year
Small Plans	2016	2015	2015
Other Plans	2016	2016	2015

Thus, not only do small plans enjoy the convenience of a convergence between the premium and Form 5500 due dates, but the due dates that converge are tied to the same valuation. This accommodates the desire of many small plan sponsors to defer the plan valuation until after the beginning of the year following the valuation date, when profits and taxes can be computed.

For small plans, the combination of the new due date and the look-back rule has basically the same result as if the old small-plan due date (four months after the end of the premium payment year) were extended for 5½ months without a look-back. For example, consider the following table comparing the final rule with a 5½-month due date extension (without a look-back) for a calendar-year plan:

[17] The old small-plan category corresponds only approximately with the category of plans permitted by statute to use non-first-day-of-the-plan-year valuation dates. See preamble to PBGC's final PPA 2006 premium rule, 73 FR 15065 at 15069 (Mar. 21, 2008).

[18] ERISA section 303(g)(2)(B) provides that "if, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans which are single-employer plans and are maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account." ERISA section 303(g)(2)(C) provides additional rules dealing with predecessor employers and providing that a plan may qualify as "small" for its first year based on reasonable expectations about its participant count during that year.

[19] PBGC also considered having the look-back rule apply only to plans that actually have non-first-day-of-the-plan-year valuation dates, or only to plans eligible to elect such dates under the statute. PBGC rejected the former course because it believes that small plans generally will prefer the look-back rule. PBGC rejected the latter course because of the complexity of the statutory description of plans eligible to make the valuation date election.

[20] As discussed above, new plans resulting from non-*de minimis* consolidations and spinoffs are excluded from the look-back provision.

[21] See ERISA section 4006(a)(8) as added by the Moving Ahead for Progress in the 21st Century Act (Pub. L. No. 112–141) and amended by the Bipartisan Budget Act of 2013 (Pub. L. No. 113–67).

[22] See p. 5 of PBGC's Plan for Regulatory Review.

[23] Future years are used in this and the following table to avoid confusion relating to the small-plan due-date phase-in provision.

	Premium payment year	UVB valuation year	Due date
Final rule	2016	2015	October 15, 2016.
Due date extension without look-back	2015	2015	October 15, 2016.

In both cases, the premium due October 15, 2016, is based on UVBs determined for 2015. The difference is that under the amended regulation, the premium is being paid for 2016, whereas if the due date had been extended 5½ months, the premium would be for 2015.

PBGC in fact considered the alternative of extending the due date 5½ months for small plans. But premium filings contain, in addition to premium data, other data that PBGC uses to help determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. It is important that these data be as current as possible. Furthermore, PBGC decided it was administratively simpler to have all premium filings for a year be due in that year—avoiding (for example) the need to determine whether a filing made October 15, 2016, was for 2016 or 2015.

The comparison of the advanced and deferred due date approaches shows why it is not clear how to analyze the financial impact of the final rule. On the one hand, the change can be viewed as a simple acceleration of the premium due date, with small plans losing 6½ months' interest on their annual premium payments. On the other hand, it can be viewed as a deferral of the due date (with small plans gaining 5½ months' interest on their premiums each year) preceded by a one-time "extra" premium in the transition year. For purposes of the analyses in this preamble of the effects of the changes for small plans, PBGC views the due date as being accelerated rather than deferred.

Under the look-back rule, small plans pay variable-rate premiums based on year-old data. Plans may view this either positively or negatively, depending on whether UVBs are trending up or down; using year-old data to compute variable-rate premiums shifts by one year the effect of changes in those data, which are typically modest but may at times be dramatic. And for the first year to which the look-back rule applies, small plans' variable-rate premiums are based on the same UVBs as for the year before, which each small plan may consider either beneficial or detrimental depending on its circumstances.

First-Year Variable-Rate Premium Exemption

The look-back rule faces the difficulty, noted above, that a new plan does not have a prior year to look back to. The typical new plan has no vested benefits, and so would owe no variable-rate premium with or without the look-back rule. But some new plans do have UVBs—for example, newly created plans that grant past-service credits. This circumstance creates a dilemma: a new small plan cannot look back to prior-year UVBs (because it has no prior year), but it may be unable to base its first year's premium on its first year's UVBs (because its valuation date may be too late in the year). To resolve this problem, PBGC is providing an exemption from the variable-rate premium for most small plans that are new or newly covered.[24] PBGC considers it reasonable to forgo variable-rate premiums from a few new small plans in the interest of greatly simplifying its premium due date structure.[25]

However, PBGC considers plans created by consolidation or spinoff to be new plans. To avoid creating an incentive to sponsors of underfunded small plans to turn them (in effect) into new plans by spinoff or consolidation, simply to avoid paying variable-rate premiums, PBGC is excluding from this variable-rate premium exemption any new small plan that results from a non-*de minimis* consolidation or spinoff. These consolidated or spunoff plans are not subject to the look-back rule, but instead base their variable-rate premiums on current-year data, with an extended due date available (as discussed above) to provide time to calculate the premium where the UVB valuation date is late in the premium payment year.

[24] Newly covered plans are often not subject to the funding rules, on which the premium rules are based, for the year that would be their look-back year. It is possible for a newly covered plan to have been in existence as a covered plan for a portion of the preceding year. Such a plan would have a look-back year and would not need an exemption from the variable-rate premium. In the interest of simplicity, PBGC's first-year variable-rate premium exemption ignores this rare possible situation.

[25] Between 2008 and 2011, about 65 new small plans per year paid total average variable-rate premiums of a little over $82,000—less than 2 percent of total average annual new-plan variable-rate premiums.

Final-Year Variable-Rate Premium Exemption

Although the premium rates regulation exempts a plan in a standard termination from the variable-rate premium for any plan year beginning after the plan's termination date,[26] it is possible to carry out a standard termination so that the termination date and final distribution come within the same plan year. In that case, the plan is subject to the variable-rate premium—based on underfunding of vested benefits—for the very year in which it demonstrates, by closing out, that its assets are sufficient to satisfy not merely all vested benefits but all non-vested benefits as well.

As mentioned above, PBGC is expanding the exemption from the variable-rate premium to include the year in which a plan closes out, regardless of when the termination date is. Like the existing exemption, the new exemption is conditioned on completion of a standard termination. If the exemption is claimed in a premium filing made before (but in anticipation of) close-out, and close-out does not in fact occur by the end of the plan year, the exemption is lost, and the variable-rate premium is owed for that year (with applicable late charges).

As previously noted, variable-rate premium amounts not owed because of this change in the variable-rate premium exemption will significantly offset costs attributable to the revised final-year due date rule for plans in standard terminations, to which this change is related.[27]

Premium Funding Target for Plans in At-Risk Status for Funding Purposes

ERISA section 4006(a)(3)(E) makes the funding target in ERISA section 303(d) (with modifications) the basis for the premium funding target. The definition of "funding target" in section 303(d) in turn incorporates the provisions of ERISA section 303(i)(1), dealing with "at-risk" plans. (A plan is in "at-risk" status if it fails certain funding-status tests.) ERISA section 303(i)(5) provides for phasing in changes between normal and at-risk funding targets over five

[26] See *Exemption for Standard Terminations,* below.

[27] See *Final-Year Due Date* under Executive Orders 12866 and 13563, below, for detailed discussion of costs and benefits.

years and thus ameliorates the effects of section 303(i)(1). Although neither section 303(d) nor section 303(i)(1) refers explicitly to section 303(i)(5), PBGC believes that section 303(i)(5) clearly applies to the determination of the premium funding target. PBGC is adding a provision to the premium rates regulation clarifying this point.

ERISA section 303(i)(1)(A)(i) requires the use of special actuarial assumptions in calculating an at-risk plan's funding target, and section 303(i)(1)(A)(ii) requires that a "loading factor" be included in the funding target of an at-risk plan that has been at-risk for two of the past four plan years. The loading factor, described in section 303(i)(1)(C), is the sum of (i) an additional amount equal to $700 times the number of plan participants and (ii) an additional amount equal to 4 percent of the funding target determined as if the plan were not in at-risk status.

In response to inquiries from pension practitioners, PBGC is amending the premium rates regulation to clarify the application of the loading factor to the calculation of the premium funding target for plans in at-risk status.

The statutory variable-rate premium provision refers explicitly to the defined term "funding target," which for at-risk plans clearly includes the section 303(i)(1) modifications. PBGC thus considers it clear that all of the at-risk modifications must be reflected in the premium funding target. And considering that the funding target and the premium funding target are so closely analogous, it seems natural that for premium purposes, the 4 percent increment referred to in section 303(i)(1)(C)(ii) should be taken to mean 4 percent of the premium funding target determined as if the plan were not in at-risk status.

But for premium purposes, the term "participant" in the loading factor provision is ambiguous. Because the premium funding target reflects only vested benefits, while the funding target reflects all accrued benefits, there is a suggestion that the term "participant" should in the premium context be understood to refer to vested participants. But many participants are partially vested (as in plans with graded vesting) or are vested in one benefit but not another (for example, vested in a lump-sum death benefit but not in a retirement annuity) and thus are not clearly either vested or non-vested. Furthermore (putting vesting aside), the premium regulations (§ 4006.6 of the premium rates regulation) and the Internal Revenue Service's regulation on special rules for plans in at-risk status (26 CFR 1.430(i)–1(c)(2)(ii)(A)) count participants differently.

PBGC is resolving the statutory ambiguity by providing that the participant count to use in calculating the loading factor to be reflected in the premium funding target is the same participant count used to compute the load for funding purposes. This solution has the advantage that it avoids introducing new participant-counting rules and does not impose on filers the burden of determining two different participant counts for two similar purposes.

One commenter argued that the loading factor should not be included in the premium funding target. The commenter noted that ERISA section 4006 could have referred to both ERISA sections 303(d) and 303(i), but refers only to section 303(d). However, as the commenter notes, section 303(d) refers to section 303(i). Thus section 4006, by referring to section 303(d), is referring to section 303(i) as well.

The commenter also supported the argument against incorporation of the loading factor by appealing to the difference in the purposes of sections 303 and 4006, the former dealing with plan funding and taking unvested benefits into account, the latter dealing with PBGC premiums and not taking unvested benefits into account. PBGC acknowledges these differences, but points out that the two sections are linked, in that section 4006 refers to section 303 for the methodology for calculating premiums. In fact, section 4006(a)(3)(E)(iii)(I) specifies how the premium methodology differs from the funding methodology. Two differences are noted: disregarding unvested benefits and using different interest assumptions. The load is not mentioned. PBGC thus believes that the statutory language adequately supports the applicability of the loading factor to the calculation of premiums.

Finally, the commenter claimed that participants in at-risk plans are better off if funds are devoted to benefits rather than premiums. But even if each dollar spent on pension insurance premiums is a dollar not spent on benefits, pension insurance is for the protection of those very benefits. PBGC insurance would appear to be even more valuable for participants in at-risk plans than in plans not in at-risk status.

Finding none of the commenter's reasoning persuasive, PBGC continues to hew to the position that the loading factor applies to the premium funding target.

Penalties

Lowering the Self-Correction Penalty Cap

The difference between the normal penalty rate of 5 percent per month and the self-correction rate of 1 percent per month provides an incentive to self-correct and reflects PBGC's judgment that those that come forward voluntarily to correct underpayments deserve more lenient treatment than those that PBGC ferrets out through its premium enforcement programs. But because of a penalty cap of 100 percent of the underpayment, regardless of the rate it accrues at, a plan that self-corrects after 100 months pays the same penalty as if it had been tracked down by PBGC. PBGC occasionally encounters situations in which—typically when there is a change in plan sponsor or plan actuary—a plan with a long history of underpaying or not paying premiums "comes in from the cold." PBGC believes that in fairness to such filers (and to persuade others to emulate them), the maximum penalty for self-correctors should be substantially less than that for those that do not self-correct.[28]

To preserve the self-correction penalty differential for long-overdue premiums, PBGC is capping the self-correction penalty at 50 percent of the unpaid amount. While this will reduce PBGC's penalty income in these cases, acceptance of the reduction is consistent with the view of penalties as a means to encourage compliance, rather than as a source of revenue.

Expansion of Penalty Waiver Authority

The premium payment regulation and its appendix include many specific penalty waiver provisions that provide guidance to the public about the circumstances in which PBGC considers waivers appropriate—circumstances such as reasonable cause and mistake of law. To deal with unanticipated situations that nevertheless seem to warrant penalty relief, § 4007.8(d) refers to the policy guidelines in the appendix, and § 21(b)(5) of the appendix says that PBGC may waive all or part of a premium penalty if it determines that it is appropriate to do so, and that PBGC intends to exercise this waiver authority only in narrow circumstances.

In reviewing the circumstances where it has exercised its waiver authority, PBGC has concluded that the term

[28] PBGC took a step in this direction with its policy notice of February 9, 2012 (see discussion under Background above). However, the waiver of all penalties announced in that notice applied only for a limited time and only to plans that had never paid premiums.

"narrow" may not capture well the scope of that exercise and may thus be misleading. To avoid an implication that PBGC considers its waiver authority more narrowly circumscribed than in fact it does, the sentence about narrow circumstances is being removed from the appendix.

Codification of Seven-Day Penalty Waiver Rule

On September 15, 2011 (at 76 FR 57082), PBGC published a policy notice announcing (among other things) that for plan years beginning after 2010, it would waive premium payment penalties assessed solely because premium payments were late by not more than seven calendar days.

In applying this policy, PBGC assumes that each premium payment is made seven calendar days before it is actually made. All other rules are then applied as usual. If the result of this procedure is that no penalty would arise, then any penalty assessed on the basis of the actual payment dates is waived.

PBGC is codifying this policy in the premium payment regulation.

One commenter complained that by the time PBGC notifies a late filer that an expected filing has not been received, the seven-day grace period has expired, and the filer becomes liable for a five percent penalty. The commenter requested that tardy filers in such circumstances be given an additional 15 days to pay and incur a one-percent penalty or that PBGC notify plans immediately when expected filings are not received, to give them the full benefit of the seven-day grace period within which to file.

Plan administrators are expected to know the law and to be capable of setting up tickler files and computerized reminders for legal obligations they may otherwise forget to fulfill. Nonetheless, PBGC does offer a reminder service. Reminders are sent shortly after the beginning of each month to practitioners who have signed up for reminders for that month. Plan administrators may sign up for reminders at *http://www.pbgc.gov/prac/pg/other/practitioner-filing-reminders.html.*

PBGC believes no modification of its premium regulations is called for to accommodate this comment.

Small-Plan Penalty Relief for Variable-Rate Premium Estimates

The premium payment regulation provides an option for paying an estimate of the variable-rate premium at the due date and "truing up" within 6½ months without penalty. The availability of this option has been restricted to mid-size and large plans. With the elimination of different due dates based on plan size, the option is being made available to plans of any size. PBGC expects that very few small plans will take advantage of the option, since in virtually all cases, the variable-rate premium will be known by the uniform due date. But the only comment PBGC received on this issue was in favor of making the option available to small plans.

Other Changes

Variable-Rate Premium Cap

Before amendment to conform to statutory changes made by PPA 2006, PBGC's premium regulations used the same date for counting participants for purposes of the flat-rate premium and for determining UVBs for purposes of the variable-rate premium. This date was (generally) "the last day of the plan year preceding the premium payment year."

When PBGC amended the premium regulations to conform to PPA 2006, the amendments provided that in general, UVBs were to be determined as of a different date from the date used to count participants. Thus references in the regulations to "the last day of the plan year preceding the premium payment year" in some cases were changed to refer to "the participant count date" and in other cases were changed to refer to "the UVB valuation date."

The regulatory provision dealing with the variable-rate premium cap for plans of small employers includes two references to "the last day of the plan year preceding the premium payment year" that should have been amended to refer to "the participant count date" but were overlooked. PBGC is correcting the variable-rate premium cap provision to remedy this oversight.

Exemption for Standard Terminations

When PBGC added to the premium regulations the exemption from the variable-rate premium for plans terminating in standard terminations, it stated that the exemption would apply to "a standard termination with a proposed termination date during a plan year preceding the premium payment year."[29] This reflects the provision in Rev. Rul. 79–237 (1979–2 C.B. 190) that minimum funding standards apply only until the end of the plan year that includes the termination date. In the text of the regulation, this requirement was expressed by requiring that the proposed termination date be on or before "the last day of the plan year preceding the premium payment year" — the same words used to identify the date as of which participants were to be counted for purposes of the flat-rate premium and the date as of which UVBs were to be determined for purposes of the variable-rate premium.

When PBGC amended the premium regulations to conform to statutory changes made by PPA 2006, as described above, the phrase "the last day of the plan year preceding the premium payment year" in the standard termination exemption from the variable-rate premium should have been left unchanged. Instead, it was inadvertently amended to read "the UVB valuation date." PBGC is correcting the exemption to require that the proposed termination date be "before the beginning of the premium payment year," which also makes the provision clearer and simpler.[30]

Liability for Premiums in Distress and Involuntary Terminations

The premium payment regulation provides that a single-employer plan does not have an obligation to pay premiums if the plan is the subject of distress or involuntary termination proceedings, with a view to conserving plan assets in such situations. The premium payment obligation then falls solely on the plan sponsor's controlled group. Heretofore, the regulation focused on the plan year for which a premium is due; the plan's obligation was tolled with respect to premiums for the year in which the termination was initiated and future years.

PBGC has encountered cases in which plan administrators have used plan assets to pay premiums for which the plans had no obligation because termination proceedings began later in the plan year, after payment was made. To address this problem, PBGC is revising the regulation so that a plan's obligation to pay premiums ceases when termination proceedings begin—an event of which the plan administrator will have notice—at which time the premium payment obligation falls solely on the plan sponsor's controlled group.

This change does not affect the amount of premiums due. It simply reduces administrative burden by making it easier for a plan administrator to determine whether the plan has an obligation to make a premium payment.

[29] See preamble to final rule, 54 FR 28950 (July 10, 1989).

[30] As discussed above, PBGC is broadening the scope of this exemption to include the year in which a standard termination is completed, regardless of the timing of the termination date.

Definition of Newly Covered Plan

The current definition of newly covered plan excludes new plans. In rare cases, a new plan might not initially be covered by title IV of ERISA and might then become covered later in its first year of existence. PBGC is revising the definition to remove the exclusion of new plans so that in the rare case described, the plan will be a newly covered plan (as well as a new plan) and thus entitled to prorate its premium based on its coverage date (as newly covered plans are permitted to do) rather than its effective date (as new plans are permitted to do).

Changes Related to MAP–21 and BBA 2013

On July 6, 2012, and December 26, 2013 (respectively), the President signed into law the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. No. 112–141) and the Bipartisan Budget Act of 2013 (BBA 2013) (Pub. L. No. 113–67). MAP–21 and BBA 2013 included provisions about PBGC premiums that, without the need for implementing action by PBGC, have already become effective.[31] PBGC is amending the premium rates regulation in accordance with MAP–21 and BBA 2013.

Under sections 40221 and 40222 of MAP–21, effective for plan years beginning after 2012, each flat or variable premium rate has a different annual inflation adjustment formula, and the variable-rate premium is limited by a cap (the "MAP–21 cap") with its own annual inflation adjustment. BBA 2013 added more adjustment provisions. Because of the multiplicity and complexity of the adjustment formulas, PBGC has concluded that it is not useful to repeat the statutory premium rate rules in the premium rates regulation. Instead, PBGC is replacing existing premium rate provisions with statutory references and will simply announce each year the new rates generated by the statutory rate formulas.

Effective for plan years beginning after 2011, section 40211 of MAP–21 establishes a "segment rate stabilization" corridor for certain interest assumptions used for funding purposes but provides (in section 40211(b)(3)(C)) for disregarding rate stabilization in determining PBGC variable-rate premiums. PBGC is revising the description of the alternative premium funding target to make clear that it is determined using discount rates unconstrained by the segment rate stabilization rules of MAP–21.

Editorial Changes

PBGC is revising the language that describes the "reconciliation" date—associated with the penalty waiver for underestimation of the variable-rate premium—to clarify that the waiver does not require a particular state of mind (of the plan administrator, sponsor, actuary, or other person) regarding the correctness or "finality" of the estimate. This clarification is not substantive but merely reflects the fact that (as noted in the 2008 preamble to the PPA 2006 amendment to the regulation) the waiver is provided "in recognition of the possibility that circumstances might make a final UVB determination by the due date *difficult* or impossible".[32]

PBGC is also making some other non-substantive editorial changes, including provision of an additional example, deletion of anachronistic text, and addition of a definitional cross-reference.

Conforming Changes to Other Regulations

PBGC's regulation on Restoration of Terminating and Terminated Plans (29 CFR part 4047) has a cross-reference to § 4006.4(c) of the premium rates regulation, which used to describe the alternative calculation method for determining the variable-rate premium[33] but no longer does so. To avoid confusion, PBGC is removing the obsolete cross-reference.

PBGC is deleting from its regulation on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000) a provision that parallels anachronistic text that is being deleted from the premium rates regulation.

Comments Unrelated to Proposed Regulatory Changes

De Minimis Plan Transactions

One commenter proposed a change to the "merger-spinoff rule." That provision applies where there is a plan merger or spinoff at the very beginning of the premium payment year (the "stroke of midnight" between the prior year and the premium payment year). The provision shifts the participant count date from the day before the premium payment year begins to the first day of the premium payment year for certain plans involved in such mergers or spinoffs. The participant count date shifts for the transferee plan in a non-*de minimis* merger and for the transferor plan in a non-*de minimis* spinoff. Participants for whom the transferor plan in a merger will pay no premiums get picked up in the transferee plan's participant count, and participants for whom the transferee plan in a spinoff will pay premiums get dropped from the transferor plan's participant count. In general, a transaction is *de minimis* if the liabilities of one of the two plans involved in the transaction are less than three percent of the other plan's assets.

The commenter suggested that the exception for *de minimis* transactions be eliminated. PBGC believes consideration of this suggestion should be deferred. The suggestion deals with a feature of the premium rates regulation not directly focused on by the proposed rule. While the suggestion would tend to lower premiums for transferor plans in *de minimis* spinoffs, it would tend to raise premiums for transferee plans in *de minimis* mergers. For both types of transaction, it would mean counting participants on a different date, which might be inconvenient. And PBGC notes that *de minimis* transactions are also disregarded in determining whether a plan is a continuation plan for purposes of applying the due date and look-back rules. There is a question whether *de minimis* transactions should be taken account of for that purpose too or whether *de minimis* transactions should be treated in different ways for the two different purposes. Thus PBGC is taking no action on this suggestion now.

Post-Filing Events

PBGC's premium filing instructions require that a plan making its final premium filing report the reason why the filing is the plan's final filing. But when the event that leads to the cessation of the filing requirement—such as a plan merger or consolidation—occurs after the premium filing is made, the instructions say no amended filing is required. To avoid the need for correspondence to clarify why a plan has stopped filing, the instructions recommend contacting PBGC in such cases unless a termination, merger, or consolidation is involved.

One commenter complained that PBGC requires amended filings in final-filing circumstances where its premium instructions say amended filings are not required. (PBGC assumes the comment reflects informal guidance provided by PBGC's premium information call center.)

[31] Technical Update 12–1, *http://www.pbgc.gov/res/other-guidance/tu/tu12-1.html* provides guidance on the effect of MAP–21 on PBGC premiums.

[32] See 73 FR 15069 (emphasis supplied).

[33] The alternative calculation method is also described in the premium filing instructions for years to which it applies.

PBGC's position on amended filings in such cases is as stated in its filing instructions. Amended filings are not required for post-filing events that lead to cessation of the premium filing requirement, although voluntary informal reporting is encouraged.

Where informal guidance from a PBGC source seems to conflict with other PBGC guidance (such as premium filing instructions), PBGC encourages filers to contact PBGC's Problem Resolution Officer (Practitioners) as described in item 7 of appendix 2 to PBGC's premium filing instructions, available on PBGC's Web site (*www.pbgc.gov*).

This issue appears not to implicate anything in PBGC's premium regulations.

Penalty Relief for Premium Estimates

Two comments requested that PBGC modify the premium forms and instructions to permit a plan to take advantage of the penalty waiver for underestimation of the variable-rate premium without the need to declare the initial filing an estimate by checking a box. Since the introduction of this waiver, the instructions have required that a plan that checks the box make a reconciliation filing even when the estimated variable-rate premium turns out to be correct, and plans that fail to make the required second filing have been contacted by PBGC to enforce the requirement. Eliminating the check box would obviate the burden of making a second filing when there is no change in the premium and would conserve PBGC resources by eliminating the need for correspondence with such plans.

Although PBGC is always interested in simplifying the premium filing process, it is not taking action on this suggestion at this time. PBGC is not convinced that it has an adequate basis for concluding that the burden of the checkbox procedure outweighs the utility of the checkbox. For example, for 2012, only about 70 plans checked the estimated-filing checkbox; about 40 filed timely reconciliations and 30 did not. About another 30 plans made amended filings by the reconciliation deadline and might have qualified for penalty relief if they had checked the box to indicate that their initial filings were estimated. One commenter's assertion that plans routinely check the estimated-filing checkbox to preserve the option to amend without penalty seems unsupported by these data. Nor do the data bear out the hypothesis that many plans fail to qualify for the penalty waiver simply because they neglect to check the box. In short, so few plans seem to be affected by the checkbox requirement that PBGC believes other options, such as providing more guidance or cautions in PBGC's electronic premium filing interface, could ameliorate the commenters' concerns. PBGC thinks it prudent to explore such other options and to gather and analyze further data before deciding whether to take the checkbox off the electronic premium filing form.

PBGC welcomes further public comment on this suggestion.

Applicability

Except as indicated below, the amendments in this final rule are applicable for 2014 and later plan years.

The change in the due date and the exemption from the variable-rate premium for a plan closing out in a standard termination are applicable to plans that complete distribution of assets in satisfaction of all plan benefits under the single-employer termination regulation on or after the effective date of this final rule.

The change in the date when a plan ceases to be liable for premiums in a distress or involuntary termination is applicable to terminations with respect to which the plan administrator issues the first notice of intent to terminate, or the PBGC issues a notice of determination, on or after the effective date of this final rule.

MAP–21 became effective on July 6, 2012. BBA 2013 is effective for plan years beginning after 2013. The changes to premium rates in this final rule apply to plan years beginning after 2012 (to the extent attributable to MAP–21) or after 2013 (to the extent attributable to BBA 2013). The clarification to the definition of the alternative premium funding target after MAP–21 applies to plan years beginning after 2011.

Executive Orders 12866 and 13563

PBGC has determined, in consultation with the Office of Management and Budget, that this rulemaking is not a "significant regulatory action" under Executive Order 12866.

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 final rule is associated with retrospective review and analysis in PBGC's Plan for Regulatory Review issued in accordance with Executive Order 13563.

In accordance with OMB Circular A–4, PBGC has examined the economic and policy implications of this final rule and has concluded that the action's benefits justify its costs. That conclusion is based on the following analysis of the impact of the due date changes in this rule. (The other changes have essentially no cost-benefit impact.)

Uniform Due Dates

PBGC estimates that the reduction in administrative burden attributable to adoption of the new unified due date translates into average annual savings of 1.2 hours for each small plan. (PBGC arrived at this estimate on the basis of inquiries made to pension practitioners.) The dollar equivalent of this saving for the roughly 15,000 small plans is about $400 per plan.[34]

Adoption of the uniform due date also shifts the earnings on premium payments between plans and PBGC for the time between the old and new due dates. Because earning rates differ between PBGC and plans, the losses and gains will not balance out exactly. But the earnings shift for small plans will be virtually negligible. The analysis is not straightforward because of the concomitant shift from current-year to prior-year data. See the discussion under the heading *Combined Effects of Due Date and Look-Back Proposals*, above. But based on 2011 data, and assuming aggregate small-plan premiums of about $36 million, a 6½-month advance in the small-plan due date, and a plan earnings rate of 6 percent, small plans in the aggregate will lose about $1.2 million a year—on average, about $85 per plan. A plan's lost interest earnings will be proportional to its premium; the premium may vary widely among plans, and thus the loss may do the same.

Accordingly, PBGC foresees an average net benefit (in dollar terms) from adoption of the new uniform due date of about $315 for each small plan—about $400 in administrative cost savings offset by about $85 in lost interest earnings.

PBGC's gain will be about one-third the amount lost by plans. PBGC estimates its rate of return, from investment in U.S. Government securities, at about 2 percent. PBGC estimates plans' rate of return at 6 percent. The following table shows the estimated average interest earnings calculated with four rates: Two percent

[34] PBGC assumes for this purpose that enrolled actuaries charge about $350 per hour.

(our best estimate for PBGC's rate of return), six percent (our best estimate for plans' rate of return), and three and seven percent (the discount rates recommended by OMB Circular A–4).

Approximate average interest earnings per small plan at—			
2 percent	3 percent	6 percent	7 percent
$30	$40	$85	$95

Final-Year Due Date

Advancing the premium due date for some terminating plans will also shift earnings on the premiums from plans to PBGC. Since plans that do standard terminations are almost all small,[35] the amounts involved are also small.

On average (over the period 2001–2010), about 1,300 plans terminate each year. About half of them will have their final-year due dates advanced by an average of about 100 days; for the other half, the due date will not be advanced. Thus on average, this rule requires payment of the premium about 50 days early. The average single-employer flat-rate premium is about $950 for small plans and about $176,000 for larger plans.[36] At a rate of 6 percent, 50 days' interest on an average small-plan flat-rate premium of $950 is about $8. For larger plans, the average figure using the same methodology is about $1,450. But so few larger plans do standard terminations that the weighted average earnings loss for plans of all sizes will be only about $110 per plan, or an aggregate estimated earnings loss of $143,000.

On the other hand, there should be some savings to plans arising from calculating and paying the final-year premium while plan books and records are still open and in use for paying benefits—as opposed to later, when they would have to be found and reopened. If one-tenth of final-year filers (130 plans) each save one hour of actuarial time at an average of $350 per hour, the total savings will be over $45,500 (or, if averaged over all terminating plans, about $35 per plan).

Further, historical data indicate that plans doing standard terminations could be expected to pay an aggregate of about $117,000 in variable-rate premiums in their final year. This represents an estimate of the savings to plans under the expansion of the standard termination variable-rate premium exemption. The savings will of course be realized only by the small minority of terminating plans that would owe variable-rate premium in their final year in the absence of this final rule. Averaged over all plans closing out in a year, however, the savings will be about $90 per plan.

Accordingly, PBGC foresees no significant economic impact from the due date change for terminating plans because the loss of earnings on flat-rate premiums paid earlier (about $110 per plan) will be offset by the gain from variable-rate premiums not paid (about $90 per plan) and cost reductions from improvement in administrative procedures (about $35 per plan).

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations and governmental jurisdictions.

Small Entities

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion used to determine what plans would be subject to the look-back rule under the proposal, and is consistent with certain requirements in title I of ERISA[37] and the Internal Revenue Code,[38] as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.[39] Using this proposed definition, about 64 percent (16,700 of 26,100) of plans covered by title IV of ERISA in 2010 were small plans.[40]

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the proposal on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. In its proposed rule, therefore, PBGC requested comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities. No comments were received.

Certification

On the basis of its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply. This certification is based on PBGC's estimate (discussed above) that the change to uniform due dates will create an average annual net economic benefit for each small plan of about $315. This is not a significant impact.

Paperwork Reduction Act

PBGC is submitting the information requirements under this final rule for approval by the Office of Management and Budget under the Paperwork

[35] For 2011, only about 7 percent of standard terminations involved plans with more than 100 participants.

[36] This discussion and the discussion of variable-rate premium savings below are based on (increased) 2014 premium rates applied to 2010 data on plans, participants, and unfunded vested benefits.

[37] See, *e.g.*, ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[38] See, *e.g.*, Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[39] See, *e.g.*, DOL's final rule on Prohibited Transaction Exemption Procedures, 76 Fed. Reg. 66,637, 66,644 (Oct. 27, 2011).

[40] See PBGC 2010 pension insurance data table S–31, *http://www.pbgc.gov/Documents/pension-insurance-data-tables-2010.pdf.*

Reduction Act (OMB control number 1212–0009; expires February 29, 2016). 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.

PBGC is making only small changes in the data filers are required to submit. A plan's filing will be required to state whether the plan is a new small plan created by non-*de minimis* consolidation or spinoff (to which special rules apply) and to indicate if an exemption from the variable-rate premium is claimed under one of the new exemption rules. The participant count will have to be broken down into active, terminated, and retired categories. Changes to the filing instructions clarify how to calculate premiums, set forth the new due date rules, and deal with other routine matters such as updating examples and premium rates.

PBGC needs the information in a premium filing to identify the plan for which the premium is paid to PBGC, to verify the amount of the premium, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help PBGC track the creation of new plans and the transfer of plan assets and liabilities among plans, and to keep PBGC's inventory of insured plans up to date. PBGC receives premium filings from about 25,700 respondents each year and estimates that the total annual burden of the collection of information will be about 8,000 hours and $53,255,000.

In comparison with the burden that OMB had approved for this information collection before PBGC's recent final rule eliminating the early due date for large plans' flat-rate premiums, this burden estimate reflects both a decrease in burden attributable to changes in the premium due dates (under both the large-plan final rule and this final rule) and an increase in burden attributable to a re-estimate of the existing premium filing burden. The increase in burden due to re-estimation is about 31,300 hours, and the decrease due to the due date changes is about 35,000 hours (about 17,000 hours for large plans and about 18,000 hours for small plans), a net decrease of about 3,700 hours from the burden approved before the large-plan final rule (about 163,600 hours). PBGC assumes that about 95 percent of the work is contracted out at $350 per hour, so the 35,000-hour decrease attributable to the two final rules is equivalent to about 1,750 hours of in-house labor and about $11,600,000 of contractor costs.

The burden for which PBGC sought OMB approval in connection with the recent final rule eliminating the early due date for large plans' flat-rate premiums was about 178,000 hours (about 8,900 in-house hours plus about $59,250,000 in contractor costs for the remaining 169,100 hours). This burden estimate reflected both the increase due to re-estimation and the decrease due to the large-plan flat-rate due date change.

In comparison with the 178,000-hour burden estimate, the new burden estimate reflects a decrease of about 18,000 hours, attributable to the due date change for small plans. Since PBGC assumes that about 95 percent of the work is contracted out at $350 per hour, this 18,000-hour decrease is equivalent to about 900 hours of in-house labor and about $6 million of contractor costs.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4006

Employee benefit plans, Pension insurance.

29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4047

Employee benefit plans, Pension insurance.

In consideration of the foregoing, PBGC amends 29 CFR parts 4000, 4006, 4007, and 4047 as follows:

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

■ 1. The authority citation for part 4000 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

§ 4000.3 [Amended]

■ 2. In § 4000.3(b):
■ a. Paragraph (b)(1)(i) is removed.
■ b. Paragraphs (b)(1)(ii), (b) (1)(iii), and (b)(1)(iv) are redesignated as paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) respectively.

PART 4006—PREMIUM RATES

■ 3. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

■ 4. In § 4006.2:
■ a. The introductory text is amended by removing the words "and single-employer plan" and adding in their place the words "single-employer plan, and termination date".
■ b. The definition of *participant count* is amended by removing the words "for a plan year" and by removing the words "for the plan year".
■ c. The definition of *participant count date* is amended by removing the words "for a plan year".
■ d. The definition of *UVB valuation date* is amended by removing the words "for a plan year"; and by removing the words "plan year determined" and adding in their place the words "UVB valuation year, determined".
■ e. The definition of *newly-covered plan* is revised, and new definitions of *continuation plan, small plan,* and *UVB valuation year* are added, in alphabetical order, to read as follows:

§ 4006.2 Definitions.

* * * * *

Continuation plan means a new plan resulting from a consolidation or spinoff that is not *de minimis* pursuant to the regulations under section 414(*l*) of the Code.

* * * * *

Newly covered plan means a plan that becomes covered by title IV of ERISA during the premium payment year and that existed as an uncovered plan immediately before the first date in the premium payment year on which it was a covered plan.

* * * * *

Small plan means a plan—

(1) Whose participant count is not more than 100, or

(2) Whose funding valuation date for the premium payment year, determined in accordance with ERISA section 303(g)(2), is not the first day of the premium payment year.

* * * * *

UVB valuation year of a plan means—

(1) In general,—

(i) The plan year preceding the premium payment year, if the plan is a small plan other than a continuation plan, or

(ii) The premium payment year, in any other case; or

(2) For a small plan that so opts subject to PBGC premium instructions, the premium payment year.

■ 5. In § 4006.3:
■ a. Paragraphs (c) and (d) are removed.
■ b. A sentence is added to the end of the introductory text, and paragraphs (a) and (b) are revised, to read as follows:

§ 4006.3 Premium rate.

* * * Premium rates (and the MAP–21 cap rate referred to in paragraph (b)(2) of this section) are subject to

change each year under inflation indexing provisions in section 4006 of ERISA.

(a) *Flat-rate premium.* The flat-rate premium for a plan is equal to the applicable flat premium rate multiplied by the plan's participant count. The applicable flat premium rate is the amount prescribed for the calendar year in which the premium payment year begins by the applicable provisions of—

(1) ERISA section 4006(a)(3)(A), (F), and (G) for a single-employer plan, or

(2) ERISA section 4006(a)(3)(A), (H), and (J) for a multiemployer plan.

(b) *Variable-rate premium.*

(1) *In general.* Subject to the cap provisions in paragraphs (b)(2) and (b)(3) of this section, the variable-rate premium for a single-employer plan is equal to a specified dollar amount for each $1,000 (or fraction thereof) of the plan's unfunded vested benefits as determined under § 4006.4 for the UVB valuation year. The specified dollar amount is the applicable variable premium rate prescribed by the applicable provisions of ERISA section 4006(a)(8) for the calendar year in which the premium payment year begins.

(2) *MAP–21 cap.* The variable-rate premium for a plan is not more than the applicable MAP–21 cap rate multiplied by the plan's participant count. The applicable MAP–21 cap rate is the amount prescribed by the applicable provisions of ERISA section 4006(a)(3)(E)(i)(II), (E)(i)(III), (K), and (L) for the calendar year in which the premium payment year begins.

(3) *Small-employer cap.* (i) *In general.* If a plan is described in paragraph (b)(3)(ii) of this section for the premium payment year, the variable-rate premium is not more than $5 multiplied by the square of the participant count. For example, if the participant count is 20, the variable-rate premium is not more than $2,000 ($\$5 \times 20^2 = \$5 \times 400 = \$2{,}000$).

(ii) *Plans eligible for cap.* A plan is described in paragraph (b)(3)(ii) of this section for the premium payment year if the aggregate number of employees of all employers in the plan's controlled group on the first day of the premium payment year is 25 or fewer.

(iii) *Meaning of "employee."* For purposes of paragraph (b)(3)(ii) of this section, the aggregate number of employees is determined in the same manner as under section 410(b)(1) of the Code, taking into account the provisions of section 414(m) and (n) of the Code, but without regard to section 410(b)(3), (4), and (5) of the Code.

■ 6. In § 4006.4:

■ a. Paragraph (a) is amended by removing the words "for the premium payment year" where they appear five times in the paragraph and adding in their place the first four times (but not the fifth time) the words "for the UVB valuation year".

■ b. Paragraph (b)(2) introductory text is amended by removing the words "premium payment year" and adding in their place the words "UVB valuation year".

■ c. Paragraph (b)(2)(ii) is amended by removing the words "premium payment year" where they appear twice in the paragraph and adding in their place (in both places) the words "UVB valuation year".

■ d. New paragraph (b)(3) is added to read as follows:

§ 4006.4 Determination of unfunded vested benefits.

* * * * *

(b) * * *

(3) *"At-risk" plans; transition rules; loading factor.* The transition rules in ERISA section 303(i)(5) apply to the determination of the premium funding target of a plan in at-risk status for funding purposes. If a plan in at-risk status is also described in ERISA section 303(i)(1)(A)(ii) for the UVB valuation year, its premium funding target reflects a loading factor pursuant to ERISA section 303(i)(1)(C) equal to the sum of—

(i) *Per-participant portion of loading factor.* The amount determined for funding purposes under ERISA section 303(i)(1)(C)(i) for the UVB valuation year, and

(ii) *Four percent portion of loading factor.* Four percent of the premium funding target determined as if the plan were not in at-risk status.

* * * * *

■ 7. In § 4006.5:

■ a. Paragraph (a) introductory text is amended by removing the reference "paragraphs (a)(1)–(a)(3) of this section" and adding in its place the reference "paragraphs (a)(1)–(a)(4) of this section".

■ b. Paragraph (a)(3) introductory text is amended by removing the words "described in this paragraph if" and adding in their place the words "described in this paragraph if it makes a final distribution of assets in a standard termination during the premium payment year or if".

■ c. Paragraph (a)(3)(ii) is amended by removing the words "on or before the UVB valuation date" and adding in their place the words "before the beginning of the premium payment year".

■ d. Paragraph (e)(2)(ii) is amended by removing the words "plan year" and adding in their place the words "premium payment year".

■ e. Paragraph (f)(1) is amended by removing the words "newly-covered" (with a hyphen) and adding in their place the words "newly covered" (without a hyphen).

■ f. Paragraph (a)(4) is added, and paragraphs (c), (d), (e)(1), and (g) are revised, to read as follows:

§ 4006.5 Exemptions and special rules.

* * * * *

(a) * * *

(4) *Certain small new and newly covered plans.* A plan is described in this paragraph if—

(i) It is a small plan other than a continuation plan, and

(ii) It is a new plan or a newly covered plan.

* * * * *

(c) *Participant count date; in general.* Except as provided in paragraphs (d) and (e) of this section, the participant count date of a plan is the last day of the plan year preceding the premium payment year.

(d) *Participant count date; new and newly covered plans.* The participant count date of a new plan or a newly covered plan is the first day of the premium payment year. For this purpose, a new plan's premium payment year begins on the plan's effective date.

(e) *Participant count date; certain mergers and spinoffs.* (1) The participant count date of a plan described in paragraph (e)(2) of this section is the first day of the premium payment year.

* * * * *

(g) *Alternative premium funding target.* A plan's alternative premium funding target is determined in the same way as its standard premium funding target except that the discount rates described in ERISA section 4006(a)(3)(E)(iv) are not used. Instead, the alternative premium funding target is determined using the discount rates that would have been used to determine the funding target for the plan under ERISA section 303 for the purpose of determining the plan's minimum contribution under ERISA section 303 for the UVB valuation year if the segment rate stabilization provisions of ERISA section 303(h)(2)(iv) were disregarded. A plan may elect to compute unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2), and may revoke such an election, in accordance with the provisions of this paragraph (g). A plan

must compute its unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2) if an election under this paragraph (g) to use the alternative premium funding target is in effect for the premium payment year.

(1) An election under this paragraph (g) to use the alternative premium funding target for a plan must specify the premium payment year to which it first applies and must be filed by the plan's variable-rate premium due date for that premium payment year. The premium payment year to which the election first applies must begin at least five years after the beginning of the premium payment year to which a revocation of a prior election first applied. The election will be effective—

(i) For the premium payment year for which made and for all plan years that begin less than five years thereafter, and

(ii) For all succeeding plan years until the premium payment year to which a revocation of the election first applies.

(2) A revocation of an election under this paragraph (g) to use the alternative premium funding target for a plan must specify the premium payment year to which it first applies and must be filed by the plan's variable-rate premium due date for that premium payment year. The premium payment year to which the revocation first applies must begin at least five years after the beginning of the premium payment year to which the election first applied.

§ 4006.7 [Amended]

■ 8. In § 4006.7, paragraph (b) is amended by removing the words "under section 4048 of ERISA".

PART 4007—PAYMENT OF PREMIUMS

■ 9. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(A), 1306, 1307.

§ 4007.2 [Amended]

■ 10. In § 4007.2:

■ a. Paragraph (a) is amended by removing the words "and single-employer plan" and adding in their place the words "single-employer plan, and termination date".

■ b. Paragraph (b) is amended by removing the words "new plan" and adding in their place the words "continuation plan, new plan"; and by removing the words "and short plan year" and adding in their place the words "short plan year, small plan, and UVB valuation date".

■ 11. In § 4007.3:

■ a. Paragraph (b) is amended by removing the words "the PBGC" and adding in their place the word "PBGC"; and by removing the second sentence (which begins "The requirement . . ." and ends ". . . after 2006").

■ b. Paragraph (a) is revised to read as follows:

§ 4007.3 Filing requirement; method of filing.

(a) *In general.* The estimation, determination, declaration, and payment of premiums must be made in accordance with the premium instructions on PBGC's Web site (*www.pbgc.gov*). Subject to the provisions of § 4007.13, the plan administrator of each covered plan is responsible for filing prescribed premium information and payments. Each required premium payment and related information, certified as provided in the premium instructions, must be filed by the applicable due date specified in this part in the manner and format prescribed in the instructions.

* * * * *

■ 12. In § 4007.8:

■ a. Paragraph (a) introductory text is amended by removing the words "the PBGC" and adding in their place the word "PBGC"; and by removing the second sentence (which begins "The charge . . ." and ends ". . . unpaid premium").

■ b. Paragraphs (f), (g), (h), and (i) are removed, and paragraph (j) is redesignated as paragraph (g).

■ c. Paragraphs (a)(1) and (a)(2) and the introductory text of redesignated paragraph (g) are revised, and new paragraph (f) is added, to read as follows:

§ 4007.8 Late payment penalty charges.

(a) * * *

(1) For any amount of unpaid premium that is paid on or before the date PBGC issues a written notice to any person liable for the premium that there is or may be a premium delinquency (for example, a premium bill, a letter initiating a premium compliance review, a notice of filing error in premium determination, or a letter questioning a failure to make a premium filing), 1 percent per month, to a maximum penalty charge of 50 percent of the unpaid premium; or

(2) For any amount of unpaid premium that is paid after that date, 5 percent per month, to a maximum penalty charge of 100 percent of the unpaid premium.

* * * * *

(f) *Filings not more than 7 days late.* PBGC will waive premium payment penalties that arise solely because premium payments are late by not more than seven calendar days, as described in this paragraph (f). In applying this waiver, PBGC will assume that each premium payment with respect to a plan year was made seven calendar days before it was actually made. All other rules will then be applied as usual. If the result of this procedure is that no penalty would arise for that plan year, then any penalty that would apply on the basis of the actual payment date(s) will be waived.

(g) *Variable-rate premium penalty relief.* PBGC will waive the penalty on any underpayment of the variable-rate premium for the period that ends on the earlier of the date the reconciliation filing is due or the date the reconciliation filing is made if, by the date the variable-rate premium for the premium payment year is due under § 4007.11(a)(1),—

* * * * *

■ 13. Section 4007.11 is revised to read as follows:

§ 4007.11 Due dates.

(a) *In general.* In general:

(1) The flat-rate and variable-rate premium filing due date is the fifteenth day of the tenth calendar month that begins on or after the first day of the premium payment year.

(2) If the variable-rate premium paid by the premium filing due date is estimated as described in § 4007.8(g)(1)(ii), a reconciliation filing and any required variable-rate premium payment must be made by the end of the sixth calendar month that begins on or after the premium filing due date.

(3) *Small plan transition rule.* Notwithstanding paragraph (a)(1) of this section, if a plan had fewer than 100 participants for whom flat-rate premiums were payable for the plan year preceding the last plan year that began before 2014, then the plan's due date for the first plan year beginning after 2013 is the fifteenth day of the fourteenth calendar month that begins on or after the first day of that plan year.

(b) *Plans that change plan years.* For a plan that changes its plan year, the flat-rate and variable-rate premium filing due date for the short plan year is as specified in paragraph (a) of this section. For the plan year that follows a short plan year, the due date is the later of —

(1) The due date specified in paragraph (a) of this section, or

(2) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *New and newly covered plans.* For a new plan or newly covered plan, the

flat-rate and variable-rate premium filing due date for the first plan year of coverage is the latest of—

(1) The due date specified in paragraph (a) of this section, or

(2) 90 days after the date of the plan's adoption, or

(3) 90 days after the date on which the plan became covered by title IV of ERISA, or

(4) In the case of a small plan that is a continuation plan, 90 days after the plan's UVB valuation date.

(d) *Terminating plans.* For a plan that terminates in a standard termination, the flat-rate and variable-rate premium filing due date for the plan year in which all plan assets are distributed pursuant to the plan's termination is the earlier of—

(1) The due date specified in paragraph (a) of this section, or

(2) The date when the post-distribution certification under § 4041.29 of this chapter is filed.

(e) *Continuing obligation to file.* The obligation to make flat-rate and variable-rate premium filings and payments under this part continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of ERISA, whichever occurs earlier.

■ 14. Section 4007.12 is amended by revising paragraph (b) to read as follows:

§ 4007.12 Liability for single-employer premiums.

* * * * *

(b) After a plan administrator issues (pursuant to section 4041(a)(2) of ERISA) the first notice of intent to terminate in a distress termination under section 4041(c) of ERISA or PBGC issues a notice of determination under section 4042(a) of ERISA, the obligation to pay the premiums (and any interest or penalties thereon) imposed by ERISA and this part for a single-employer plan shall be an obligation solely of the contributing sponsor and the members of its controlled group, if any.

§ 4007.13 [Amended]

■ 15. Section 4007.13 is amended by removing the words "under section 4048 of ERISA" where they appear once in paragraph (a)(1) introductory text, once in paragraph (a)(2) introductory text, once in paragraph (d)(1), once in paragraph (e)(3) introductory text, once in paragraph (e)(4) introductory text, once in paragraph (e)(4)(i), and once in paragraph (f) introductory text.

Appendix to Part 4007 [Amended]

■ 16. In the Appendix to part 4007:

■ a. Section 21(b)(1) is amended by removing the words "for waivers if certain 'safe harbor' tests are met, and"; and by removing the words "30 days after the date of the bill" and adding in their place the words "30 days after the date of the bill, and for waivers in certain cases where you pay not more than a week late or where you estimate the variable-rate premium and then timely correct any underpayment".

■ b. Section 21(b)(5) is amended by removing the second sentence (which begins "We intend . . ." and ends ". . . narrow circumstances").

PART 4047—RESTORATION OF TERMINATING AND TERMINATED PLANS

■ 17. The authority citation for part 4047 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1347.

§ 4047.4 [Amended]

■ 18. In § 4047.4, paragraph (c) is amended by removing the words "in § 4006.4(c) of this chapter".

Issued in Washington, DC, this 5th day of March 2014.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2014–05212 Filed 3–10–14; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2014–0048]

Drawbridge Operation Regulations; Saugatuck River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Metro North (SAGA) Bridge. The deviation is necessary to facilitate replacement of timber ties at the bridge. This deviation allows the Metro North SAGA Bridge, across Saugatuck River, mile 1.1, at Saugatuck, Connecticut, to require an advance notice for bridge openings for 15 days at various times.

DATES: This deviation is effective from March 17, 2014 through March 31, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0048] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, *judy.k.leung-yee@uscg.mil*, or (212) 668–7165. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

The Metro North SAGA Bridge, across Saugatuck River, mile 1.1, at Saugatuck, Connecticut, has a vertical clearance of 13 feet at mean high water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.221(b).

The Saugatuck River is transited primarily by seasonal recreational vessels of various sizes.

The Connecticut Department of Transportation requested a temporary deviation to facilitate replacement of railroad ties at the bridge.

Under this temporary deviation the Metro North SAGA Bridge will require a two hour advance notice for bridge openings from March 17, 2014 through March 31, 2014, between 8:10 a.m. and 4 p.m., Monday through Friday and between 7 a.m. and 4 p.m., on Saturday and Sunday. Vessels that can pass under the closed draw may do so at all times.

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

Dated: February 20, 2014.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2014–05098 Filed 3–10–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 208

Flood Control Regulations, Marshall Ford Dam (Mansfield Dam and Lake Travis), Colorado River, Texas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending the rules regarding use and administration of Marshall Ford Dam (Mansfield Dam and Lake Travis), Colorado River, Texas. In 1997, the Lower Colorado River Authority (LCRA) completed repayment of the federal government's contribution for acquisition and construction costs related to Mansfield Dam. Subsequently, the United States Bureau of Reclamation (USBR) has relinquished all rights and obligations to the project. However, the U.S. Department of the Interior and the USBR are referenced as project stakeholders in the Flood Control Regulations. Amending the referenced regulations to update project ownership will eliminate the current discrepancy between the regulations and associated project documents. The Fort Worth District of the Corps and LCRA have finalized a revised water control plan for Lake Travis (Marshall Ford Dam, aka Mansfield Dam). There is no intent to publish the updated water control plan in the **Federal Register**. Amending the regulations to indicate that the water control plan has been superseded would eliminate the need to amend the regulations each time the water control plan is modified.

DATES: *Effective Date:* April 10, 2014.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–SWD (Sandy Gore), 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Sandy Gore at 202–761–5237 or by email at *sandy.l.gore@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this action is to amend the regulations to reflect changes in ownership and responsibilities of flood control management of Marshall Ford Dam (Mansfield Dam and Lake Travis) by the U.S. Army Corps of Engineers (USACE) and the Lower Colorado River Authority (LCRA) and to clarify that the published water control plan has been superseded. Specifically, 33 CFR part 208 is amended:

(A) A change in project ownership. The Corps is revising 33 CFR 208.11(e) List of Projects, and 33 CFR 208.19, to indicate that the LCRA, is the responsible party for operating Marshall Ford Dam in the interest of flood control above elevation 714.

(B) Revision of the Marshall Ford Dam (Mansfield Dam and Lake Travis) water control plan in 2012.

(C) USACE intention to henceforth forego publication of the Marshall Ford Dam (Mansfield Dam and Lake Travis) water control plan in the **Federal Register**.

(D) USACE and LCRA as sources for obtaining information regarding the most recently approved and therefore currently the effective water control plan.

Background

Mansfield Dam was funded, planned, and built by the United States Bureau of Reclamation (USBR) from February 1937 through September 1940. The Lower Colorado River Authority (LCRA) acquired the land for the project and paid for the majority of the costs related to the hydroelectric power facilities. The USBR was the project owner while LCRA was repaying the federal government contribution to the project. LCRA completed repayment in May 1997, and the USBR relinquished all rights and obligations to the project. USBR has formally requested USACE revise the water control manual (of which the water control plan is an integral part) and any other regulatory documents accordingly.

As a result of Section 7 of the Flood Control Act of 1944, the U.S. Army Corps of Engineers (USACE) is responsible for prescribing a formal water control plan for regulation of the Lake Travis storage space allocated for flood control (elevation 681.0 to elevation 714.0). As per ER 1110–2–241, *Use of Storage Allocated for Flood Control and Navigation at Non-Corps Projects* (24 May 1990), paragraph *6.d.—Water Control Plan and Manual,* the Corps of Engineers is responsible for developing the formal flood control regulation/water control plan, documenting the plan in a water control manual, and furnishing a copy of the manual to the project owner. A water control plan for Lake Travis was published in the **Federal Register** (33 CFR 208.19) in May of 1951. Subsequently, 33 CFR 208 was amended in April 1976, and again in April 1979, by revising Section 208.19 to reflect revision of the water control plan. Each of these three respective water control plans, and Section 208.11, identifies the U.S. Department of the Interior and/or the USBR as stakeholders in the project.

In 2012, based on results of a recent study, USACE—Fort Worth District and LCRA finalized a jointly supported revision of the water control plan for Lake Travis. There being no requirement for publication of the water control plan in the **Federal Register**, USACE plans to henceforth forego doing so. Also in 2012, USACE—Fort Worth District and LCRA agreed on a formal Letter of Understanding (LOU) and a Water Control Agreement (WCA) in accordance with ER 1110–2–241, *Use of Storage Allocated for Flood Control and Navigation at Non-Corps Projects* (24 May 1990). LCRA has agreed to sign the LOU and the WCA, and adopt the new water control plan, upon amendment of the CFR to indicate the last published water control plan (April 1979) has been superseded.

The Corps published the proposed rule in the **Federal Register** on 23 December 2013 (78 FR 77397). The Corps did not receive any comments in response to the proposed rule.

Administrative Requirements

Plain Language

In compliance with the principles in the President's memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of "we" in this notice refers to the U.S. Army Corps of Engineers. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This final rule does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Therefore, this action is not subject to the Paperwork Reduction Act.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The 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 final 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 final rule on small entities, a small entity is defined as: (1) A small

business based on Small Business Administration size standards; (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.

After considering the economic impacts of this final rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. The final rule is consistent with current agency practice, does not impose new substantive requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a final 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. We will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 208

Dams, Flood control, Intergovernmental relations, Reservoirs.

For the reasons set out in the preamble, the Corps amends 33 CFR part 208 as follows:

PART 208—FLOOD CONTROL REGULATIONS

■ 1. The authority citation for 33 CFR part 208 continues to read as follows:

Authority: Sec. 7, 58 Stat. 890; 33 U.S.C. 709.

■ 2. Amend § 208.11(e) as follows:

■ a. Revise the entry for "Marshall Ford Dam & Res" on the "List of Projects" table; and

■ b. Revise footnote 4.

§ 208.11 Regulations for use of storage allocated for flood control or navigation and/or project operation at reservoirs subject to prescription of rules and regulations by the Secretary of the Army in the interest of flood control and navigation.

* * * * *

(e) * * *

LIST OF PROJECTS

[Non-Corps projects with Corps Regulation Requirements]

Project name [1] (1)	State (2)	County (3)	Stream [1] (4)	Project purpose [2] (5)	Storage 1000 AF (6)	Elev limits feet M.S.L. Upper (7)	Elev limits feet M.S.L. Lower (8)	Area in acres Upper (9)	Area in acres Lower (10)	Authorizing legis.[3] (11)	Proj. owner [4] (12)
*	*	*	*	*	*	*	*	*	*	*	
Marshall Ford Dam & Res	TX	Travis	Colorado R.	F	779.8	714.0	681.0	29060	18955	PL 73–392.	LCRA
				NEIM	810.5	681.0	618.0	18955	8050	PL 78–534.	

[1] Cr—Creek; CS—Control Structure; Div—Diversion; DS—Drainage Structure; FG—Floodgate; Fk—Fork; GIWW—Gulf Intercoastal Waterway; Lk—Lake; L&D—Lock & Dam; PS—Pump Station; R—River; Res—Reservoir.

[2] F—Flood Control; N—Navigation; P—Corps Hydropower; E—Non Corps Hydropower; I—Irrigation; M—Municipal and/or Industrial Water Supply; C—Fish and Wildlife Conservation; A—Low Flow Augmentation or Pollution Abatement; R—Recreation; Q—Water Quality or Silt Control.

[3] FCA—Flood Control Act; FERC—Federal Energy Regulatory Comm; HD—House Document; PL—Public Law; PW—Public Works; RHA—River & Harbor Act; SD—Senate Document; WSA—Water Supply Act.

[4] Appl Pwr—Appalachian Power; Chln PUD—Chelan Cnty PUD 1; CLPC—CT Light & Power Co; Dgls PUD—Douglas Cnty PUD 1; DWR—Department of Water Resources; EB–MUD—East Bay Municipal Utility Dist; GRD—Grand River Dam Auth; Grnt PUD—Grant Cnty PUD 2; Hnbl—city of Hannibal; LCRA—Lower Colorado River Authority; M&T Irr—Modesto & Turlock Irr; Mrcd Irr—Merced Irr; NEPC—New England Power Co; Pgnt P&L—Pugent Sound Power & Light; Ptmc Comm—Upper Potomac R Comm; Rclm B—Reclamation Board; Rkfd—city of Rockford; Sttl—city of Seattle; Tac—City of Tacoma; Vale USBR—50% Vale Irr 50% USBR; WF&CWID—City of Wichita Falls and Wichita Cnty Water Improvement District No. 2; WMEC—Western MA Electric Co; YCWA—Yuba City Water Auth; Yolo FC&W—Yolo Flood Control & Water Conserv Dist.

* * * * *

■ 3. Revise § 208.19 to read as follows:

§ 208.19 Marshall Ford Dam and Reservoir (Mansfield Dam and Lake Travis), Colorado River, Texas.

In the interest of flood control, the Lower Colorado River Authority (LCRA) shall operate the Marshall Ford Dam and Reservoir in accordance with the water control plan of regulation most recently approved by the U.S. Army Corps of Engineers (USACE), effective on the date specified in the approval. Information regarding the most recently approved water control plan of regulation may be obtained by contacting the LCRA offices in Austin, Texas, or the offices of the U.S. Army Corps of Engineers, Fort Worth Engineer District, in Fort Worth, Texas.

Dated March 6, 2014.

Approved by:

James C. Dalton,

Chief of Engineering and Construction, U.S. Army Corps of Engineers.

[FR Doc. 2014–05252 Filed 3–10–14; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0778; FRL–9907–56–Region 9]

Disapproval of State Implementation Plan Revisions; Clark County, Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing disapproval of revisions to the Clark County portion of the Nevada State Implementation Plan (SIP). This action concerns affirmative defense provisions applicable to violations related to excess emissions from sources during equipment startup, shutdown and malfunction (SSM) events. Under authority of the Clean Air Act (CAA or the Act), this action identifies deficiencies with these provisions preventing EPA's approval of them as SIP revisions.

DATES: This rule is effective on April 10, 2014.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2013–0778 for

this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94015–3901. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 942–3248, *Perez.Idalia@epa.gov.*

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

Table of Contents

I. Proposed Action

On December 10, 2013 (78 FR 74057), EPA proposed to disapprove the following section of the Clark County Air Quality Regulations (CCAQR) that was amended by the Clark County Board of Commissioners (CCBC) and submitted to EPA on behalf of the Clark County Department of Air Quality and Environmental Management (DAQEM) by the State of Nevada Division of Environmental Protection (NDEP) for incorporation into the Nevada SIP.

Local agency	Regulation No. and title	Amended	Submitted
DAQEM	Section 25: Affirmative Defense for Excess Emissions Due to Malfunctions, Startups, and Shutdown.	May 18, 2010	September 1, 2010.

We proposed to disapprove this SIP submission because some of the rule provisions do not satisfy the requirements of section 110 and part D of title I of the Act. These provisions include the following:

1. Sections 25.1 and 25.3 are inconsistent with the requirements provided in CAA section 110(a) and conflict with the fundamental enforcement structure provided in CAA sections 113 and 304, because they create an affirmative defense to monetary penalties for violations due to excess emissions from sources during startup and shutdown events. EPA believes that providing an affirmative defense applicable to avoidable violations, such as those resulting from excess emissions during planned events such as startups and shutdowns that are within the source's control, is inconsistent with the requirements provided in CAA section 110(a) and the fundamental enforcement structure provided in CAA sections 113 and 304, which provide for potential civil penalties for violations of SIP requirements.

2. The criteria for qualifying for an affirmative defense to monetary penalties for violations due to excess emissions from sources during malfunction events in CCAQR Section 25.2 are not fully consistent with CAA requirements. EPA has guidance making recommendations for criteria appropriate for affirmative defense provisions applicable in the case of malfunction events that would be consistent with the CAA. EPA's 1999 SSM Policy [1] and the February 22, 2013 Proposed SSM SIP Call [2] lay out these criteria. These criteria are guidance and states do not need to track EPA's recommended wording verbatim, but states should have SIP provisions that are consistent with these recommendations in order to assure that an affirmative defense for monetary penalties applicable in the case of malfunction events satisfies EPA's interpretation of CAA requirements. EPA interprets the CAA to allow only narrowly drawn affirmative defense provisions. The affirmative defense criteria set forth in Section 25.2.1 are not sufficiently consistent with these recommended criteria for affirmative defense provisions in SIPs for malfunctions.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submission.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received only one set of comments, from Laurie Williams, Sierra Club, letter dated January 9, 2014.

The comments and our responses are summarized below.

Comment #1: Sierra Club supports EPA's proposal because the affirmative defenses provided in Clark County Section 25 "conflict with the CAA and EPA policy." In particular, the commenter stated that EPA should not approve the SIP revision at issue because the Agency is required to disapprove any SIP revision that does not meet all applicable CAA requirements or that would interfere with any applicable CAA requirement.

Response #1: EPA acknowledges the commenter's support, in part, for the proposed action. EPA agrees that any SIP revision must be measured against the applicable substantive requirements of the CAA and the requirements of section 110(l) in particular. In this action, EPA has determined that Sections 25.1, 25.2, and 25.3 are inconsistent with the requirements provided in the CAA for the reasons explained in the proposed action.

Comment #2: Sierra Club disagrees with EPA's statements in the proposal that affirmative defenses for monetary penalties in the case of violations due to excess emissions during malfunctions may be consistent with the CAA if appropriately drawn. The commenter asserts that such affirmative defenses contravene the CAA "because they limit courts' discretion to assess penalties for violations and prevent courts from considering statutory factors." The commenter further argues that such affirmative defense provisions are inconsistent with the CAA requirement that SIP emission limits be "continuous" and that such provisions "critically disrupt the fundamental enforcement structure of the Act." The commenter provides additional assertions to support this position and includes its comments on another EPA proposed rule related to affirmative defense provisions in Oklahoma.

Response #2: EPA is disapproving the SIP revision with respect to CCAQR

[1] Memorandum dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" ("1999 Policy").

[2] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, February 22, 2013 (78 FR 12460) ("February 22, 2013 Proposed SSM SIP Calls"); also EPA's February 4, 2013 Statutory, Regulatory, and Policy Context Memorandum for the February 22, 2013 Proposed SSM SIP Calls.

Section 25 for the reasons set forth in the proposal and summarized above. The commenter argues that EPA should identify additional reasons for disapproval, including an argument that CAA section 113 unequivocally precludes such affirmative defenses. As explained in the proposal, EPA interprets the CAA to allow appropriately drawn affirmative defenses in SIP provisions in the case of violations due to excess emissions during malfunction events, if the affirmative defense is consistent with guidance recommendations for such provisions. However, EPA notes that it is not necessary to respond to the substance of this comment because our action would not change were we to include additional reasons for disapproval. EPA has concluded that the affirmative defense provisions both for malfunction events and for startup and shutdown events embodied in CCAQR Section 25 are not consistent with EPA's interpretation of the CAA for such provisions for the reasons articulated in the proposal, regardless of the additional theories advanced by the commenter in this comment.

In the event that DAQEM elects to respond to our disapproval action by revising and resubmitting CCAQR Section 25 to address the deficiencies we have identified in the current provisions, the commenter will then have an opportunity to pursue its argument that there are additional reasons for disapproval of the revised affirmative defense provisions. If that occurs in the future, EPA will evaluate the substance of the new SIP submission in light of the laws, policies, and other relevant circumstances in effect at that time.

III. EPA Action

No comments were submitted that change our assessment of CCAQR Section 25 as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is finalizing a disapproval of Section 25 as submitted. Affirmative defenses for excess emissions and other elements of Section 25 are not required by the Act, and the absence of affirmative defenses for excess emissions does not make a SIP deficient. Therefore, there are no sanction implications as described in CAA section 179 and 40 CFR 52.31, and no Federal Implementation Plan (FIP) implications as described in CAA section 110(c) as a result of this disapproval. Note that the submitted Section 25 has been adopted locally by the DAQEM, and EPA's final disapproval does not prevent sources from asserting an affirmative defense in state court. The state law affirmative defenses will not, however, be effective in the event of any action to enforce the requirements of the SIP pursuant to CAA section 304 or section 113.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

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

This rule will not have a significant impact on a substantial number of small entities because SIP disapprovals under section 110 and title I, part D of the Clean Air Act do not create any new requirements but simply disapprove requirements that the State is already imposing. Therefore, because EPA's disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132, because it merely disapproves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it disapproves a State rule implementing a Federal standard.

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

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

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

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

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective *April 10, 2014.*

L. Petitions for Judicial Review

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

List of Subjects in 40 CFR Part 52

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

Dated: February 24, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart DD—Nevada

■ 2. Section 52.1483 is amended by adding paragraph (a)(1)(iv) to read as follows:

§ 52.1483 Malfunction regulations.

(a) * * *

(1) * * *

(iv) Section 25, "Affirmative Defense for Excess Emissions Due to Malfunctions, Startup, and Shutdown," submitted by the Governor on September 1, 2010.

[FR Doc. 2014–05106 Filed 3–10–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

48 CFR Part 1052

RIN 1505–AC41

Department of the Treasury Acquisition Regulation; Internet Payment Platform; Technical Amendment

AGENCY: Office of the Procurement Executive, Treasury.

ACTION: Final rule; technical amendment.

SUMMARY: On July 9, 2012, the Department of the Treasury amended the Department of the Treasury Acquisition Regulation (DTAR) to implement use of the Internet Payment Platform, a centralized electronic invoicing and payment information system, and to change the definition of

bureau to reflect the consolidation on July 21, 2011 of the Office of Thrift Supervision with the Office of the Comptroller of the Currency. This document makes one technical amendment to a clause heading.

DATES: *Effective:* March 11, 2014.

FOR FURTHER INFORMATION CONTACT: Porter Glock, Office of the Procurement Executive, at (202) 622–7096.

SUPPLEMENTARY INFORMATION: On July 9, 2012 (77 FR 40302), the Department amended the DTAR to implement the "Internet Payment Platform." The Department has discovered that it inadvertently left off the clause date in § 1052.232–7003. To eliminate any confusion this omission may cause, this technical amendment inserts the "August 2012" date in place of "DATE TBD" in the clause heading "ELECTRONIC SUBMISSION OF PAYMENT REQUESTS."

List of Subjects in 48 CFR Part 1052 Government Procurement

Accordingly, 48 CFR part 1052 is corrected by making the following correcting amendment:

PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 1052 continues to read as follows:

Authority: 41 U.S.C. 418b.

■ 2. Amend section 1052.232–7003 by revising the clause heading to read as follows:

1052.232–7003 Electronic submission of payment requests.

* * * * *

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (AUGUST 2012)

* * * * *

Dated: February 25, 2014.

Iris B. Cooper,

Senior Procurement Executive, U.S. Department of the Treasury.

[FR Doc. 2014–05193 Filed 3–10–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective* March 11, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6088; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION:

This final rule amends the DFARS as follows:

1. Update the link for DoDAAC queries at 204.7003(a)(1).

2. Remove erroneous text at 204.7403(c).

3. Correct typographical error at 252.204–7004.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

204.7003 [Amended]

■ 2. Section 204.7003, paragraph (a)(1), is amended by removing "*https://day2k1.daas.dla.mil/daasinq/* and adding "*https://www2.transactionservices.dla.mil/edaasinq/*" in its place.

204.7403 [Amended]

■ 3. Section 204.7403, paragraph (c), is amended by removing ", that involve litigation support services and do not include the clause at *252.204–7014,* Limitations on the Use or Disclosure of Information by Litigation Support Contractors".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7004 [Amended]

■ 4. Section 252.204–7004 is amended by—

■ a. Removing the clause date "(MAY 2013)" and adding "(FEB 2014)" in its place.

■ b. Removing, in paragraph (a), the word "clause" and adding the word "provision" in its place.

[FR Doc. 2014–05205 Filed 3–10–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 120820371–4079–02]

RIN 0648–BC46

Taking and Importing Marine Mammals; Precision Strike Weapon and Air-to-Surface Gunnery Training and Testing Operations at Eglin Air Force Base, FL

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Upon application from Eglin Air Force Base (Eglin AFB), we (the National Marine Fisheries Service) issue regulations under the Marine Mammal Protection Act to govern the unintentional takings of marine mammals, by harassment, incidental to testing and training activities associated with Precision Strike Weapon (PSW) and Air-to-Surface (AS) gunnery missions, both of which are military readiness activities, at Eglin AFB, FL from approximately March 2014 to March 2019. These regulations, which allow for the issuance of a Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of take and other means of effecting the least practicable adverse impact on the affected species or stocks of marine mammals and their habitat, as well as requirements pertaining to the

monitoring and reporting of the incidental take.

DATES: *Effective Date:* March 11, 2014. *Applicability Date:* March 5, 2014 through March 4, 2019.

ADDRESSES: An electronic copy of the application containing a list of references used in this document may be obtained by writing to Tammy C. Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Documents cited in this rule may also be viewed, by appointment, during regular business hours at the above address or at the Department of the Air Force, 96 CEG/CEIEA, Natural Resources Office, 501 DeLeon St., Suite 101, Eglin AFB, FL 32542–5133/

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. We are required to grant authorization for the incidental taking of marine mammals if we find that the total taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). We must also set forth the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings. NMFS has defined negligible impact in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) amended section 101(a)(5)(A) of the MMPA by removing the small numbers and specified geographical region provisions; and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (section 3(18)(B) of the MMPA): "(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment]."

Summary of Request

On December 30, 2011, NMFS received an application from the U.S. Air Force requesting an authorization for the take of marine mammals incidental to PSW and AS gunnery testing and training operations within the Eglin Gulf Test and Training Range (EGTTR). On June 28, 2012, pursuant to 50 CFR 216.104(b)(1)(ii), NMFS began the public review process by publishing its determination that the application was adequate and complete by publishing a Notice of Receipt in the **Federal Register** (77 FR 38595) followed by a proposed rule soliciting public comments on May 7, 2013 (78 FR 26586). The regulations establish a framework for authorizing incidental take in a future Letter of Authorization (LOA). The LOA authorizes the take, by Level A (physiological) and Level B (behavioral) harassment, of Atlantic bottlenose dolphin (*Tursiops truncatus*) and Atlantic spotted dolphin (*Stenella frontalis*) incidental to PSW testing and training activities. Takes of dwarf sperm whale (*Kogia simus*), pygmy sperm whale (*K. breviceps*), Atlantic bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphin (*Stenella frontalis*), pan tropical spotted dolphin (*S. attenuate*), and spinner dolphin (*S. longirostris*) by Level B harassment will also be authorized incidental to AS gunnery testing and training operations.

PSW missions would involve air-to-surface impacts of two weapons: (1) the Joint Air-to-Surface Stand-off Missile (JASSM) AGM–158 A and B; and (2) the small diameter bomb (SDB) (GBU–39/B), which result in underwater detonations of up to approximately 300 lbs (136 kg) and 96 lbs (43.5 kg, double SDB) of net explosive weight (NEW), respectively. AS gunnery missions would involve surface impacts of projectiles and small underwater detonations. Pursuant to the MMPA, NMFS issued regulations and annual LOAs for PSW activities from 2006 to 2011, and annual Incidental Harassment Authorizations for AS gunnery activities in 2006, 2007, 2008, 2009, 2010, and 2011.

NMFS is committed to the use of the best available science. NMFS uses an adaptive transparent process that allows for both timely scientific updates and public input into agency decisions regarding the use of acoustic research and thresholds. NMFS is currently in the process of re-evaluating acoustic thresholds based on the best available science, as well as how these thresholds are applied under the MMPA to all activity types. This re-evaluation could potentially result in changes to the acoustic thresholds or their application as they apply to future Eglin AFB activities. However, it is important to note that while changes in acoustic criteria may affect the enumeration of "takes," they do not necessarily change the evaluation of population level effects or the outcome of the negligible impact analysis. In addition, while acoustic criteria may also inform mitigation and monitoring decisions, Eglin AFB has a robust adaptive management program that regularly addresses new information and allows for modification of mitigation and/or monitoring measures as appropriate.

Description of the Specified Activities

The proposed rule (78 FR 26586, May 7, 2013) includes a complete description of Eglin AFB's specified activities that are being authorized in this final rule. Underwater detonations from PSW and AS gunnery testing and training missions are most likely to result in impacts on marine mammals that could rise to the level of harassment, thus necessitating the MMPA authorization. The PSW missions involve the two weapons identified above, the JASSM and SDB, and AS gunnery missions typically involve the use of 25-mm, 40-mm, and 105-mm gunnery rounds. These activities are described in more detail in the following paragraphs.

PSW Missions

The JASSM is a precision cruise missile designed for launch from a variety of aircraft at altitudes greater than 25,000 ft (7.6 km). The JASSM has a range of more than 200 nautical miles (370.4 km) and carries a 1,000-pound warhead. The JASSM has approximately 300 lbs of TNT equivalent net explosive weight (NEW). After launch from the aircraft, the JASSM cruises at altitudes greater than 12,000 ft (3.7 km) for the majority of its flight until making the terminal maneuver towards the target. The testing exercises involving the JASSM would consist of a maximum of two live shots (single) and four inert shots (single) during the year (Table 1). One live shot will detonate in water and one will detonate in air. Detonation of the JASSM would occur under one of the following three scenarios: (1) detonation upon impact with the target (about 1.5 m above the water's surface); (2) detonation upon impact with a barge target at the surface of the water; or (3) detonation at 120 milliseconds after contact with the surface of the water.

The SDB is a GPS-guided bomb that can be carried and launched from most USAF aircraft, which makes it an important element of the USAF's Global Strike Task Force. The SDB has a range of up to 50 nautical miles and carries a 217-lb warhead. The SDB has approximately 48 lbs of TNT equivalent NEW. After being released from the aircraft at an altitude greater than 15,000 ft (4.6 km), the SDB deploys "Diamond Back" type wings that increase glide time and range as it descends towards the target. Exercises involving the SDB consist of a maximum of six live shots with two of the shots occurring simultaneously, and a maximum of 12 inert shots with up to two occurring simultaneously (Table 1).

TABLE 1—ANNUAL PSW ACTIVITIES

Weapon	Number of live shots per year	Number of inert shots per year
JASSM ...	2 single shots ..	4 inert shots.
SDB	6 shots (2 single and 2 double).	12 shots (4 single and 4 double).

Chase aircraft will accompany the launch of JASSM and SDB ordnance. Chase aircraft include F–15, F–16, and T–38 aircraft. These aircraft would follow the test items during captive carry and free flight, but would not follow either item below a predetermined altitude as directed by Flight Safety. Other airborne assets on site may include an E–9 turboprop aircraft or MH–60/53 helicopters circling around the target location. Tanker aircraft, including KC–10s and KC–135s, would also be used for aerial refueling of aircraft involved in training exercises. In addition, an unmanned barge may also be on location to hold instrumentation. If used, the barge would be up to 1,000 ft (304.8 m) away from the target location.

Based on availability, there are two possible target types to be used for the PSW mission tests. The first is a Container Express (CONEX) target (see figure 1–4 in Eglin AFB's application) that consists of five containers strapped, braced, and welded together to form a single structure. The dimensions of each container are approximately 8 ft by 8 ft by 40 ft (2.4 m by 2.4 m by 12.2 m). Each container would contain 200 55-gallon steel drums (filled with air and sealed) to provide buoyancy for the target. The second type of target is a hopper barge, which is a non-self propelled vessel typically used for transportation of bulk cargo (see figure 1–5 in Eglin AFB's application). A typical hopper barge is approximately 30 ft by 12 ft and 125 ft long (9.1 m by 3.7 m and 38.1 m long). The targets would be held in place by a 4-point anchoring system using cables.

PSW testing and training activities conducted by Eglin AFB would occur in the northern GOM in the EGTTR. Targets would be located in water less than 200 ft (61 m) deep and from 15 to 24 nm (27.8 to 44.5 km) offshore, south of Santa Rosa Island and south of Cape San Blas Site D3–A. PSW test missions may occur during any season of the year, but only during daytime hours.

AS Gunnery Missions

AS gunnery missions involve the firing of 25-mm, 40-mm, and 105-mm gunnery rounds from a circling AC–130 gunship. Each round contains 30 g, 392 g, and 2.1 kg of explosive, respectively. Live rounds must be used to produce a visible surface splash that must be used to "score" the round (the impact of inert rounds on the sea surface would not be detected). The U.S. Air Force has developed a 105-mm training round (TR) that contains less than 10 percent of the amount of explosive material (0.16 kg) as compared to the "Full-Up" (FU) 105-mm round. The TR was developed as one method to mitigate effects on marine life during nighttime AS gunnery exercises when visibility at the water surface is poor. However, the TR cannot be used in the daytime because the amount of explosive material is insufficient to be detected from the aircraft. To establish the test target area, two Mk-25 flares are deployed or a target is towed into the center of a 9.3 km cleared area on the water's surface. A typical gunship mission lasts approximately 5 hrs without refueling and 6 hrs when air-to-air refueling is accomplished. The total anticipated number of missions and rounds for daytime and nighttime activities is shown in Table 2.

TABLE 2—ANNUAL AS GUNNERY ACTIVITIES

Category	Ordnance	Number of missions	Rounds per mission	Quantity
Daytime Missions	105 mm HE (FU)	25	30	750
	40 mm HE	25	64	1,600
	25 mm HE	25	560	14000
Nighttime Missions	105 mm HE (TR)	45	30	1350
	40 mm HE	45	64	2,880
	25 mm HE	45	560	25,200
Total		70		45,780

Water ranges within the EGTTR that are typically used for AS gunnery operations are located in the GOM offshore from the Florida Panhandle (areas W–151A, W151B, W–151C, and W–151D as shown in Figure 1–9 in the Eglin AFB application). Data indicate that W–151A (Figure 1–10 in the Eglin AFB application) is the most frequently used water range due to its proximity to Hurlburt Field, but activities may occur anywhere within the EGTTR. Eglin AFB

proposes to conduct AS gunnery missions year round during both daytime and nighttime hours.

Additional information on the Eglin AFB training operations is contained in the application, which is available upon request (see **ADDRESSES**).

Comments and Responses

On May 7, 2013 (78 FR 26586), NMFS published a proposed rule to authorize the taking of marine mammals incidental to Eglin AFB's PSW and AS gunnery activities. During the 30-day public comment period, comments were received from the Marine Mammal Commission (Commission), Whale and Dolphin Conservation (WDC), and two members of the public. Comments specific to section 101(a)(5)(A) of the MMPA and NMFS' analysis of impacts to marine mammals are summarized and addressed below and/or throughout the final rule.

Comment 1: The Commission requested that Eglin AFB provide a clear, step-by-step description of how it estimated the zones of exposure and associated number of takes for impulse, peak pressure, and sound exposure level thresholds, accounting for the multiple types and quantities of ordnance to be used for representative missions.

Response: The zones of influence or exposure zones are defined as the area of ocean in which marine mammals could potentially be exposed to various noise thresholds associated with exploding ordinance. Marine mammals may be affected by certain energy and pressure levels resulting from the detonations. The methodology and analytical approach for determining the exposure zones and number of marine mammal takes is fully explained in the LOA application, proposed rulemaking (78 FR 26586, May 7, 2013), as well as in the previous IHAs and LOAs and supporting documents issued for these activities. Readers should refer to those documents for additional information.

The method to estimate the number of marine mammals potentially taken by the specified activities is based on marine mammal density, the amount and type of ordnance proposed, and distances to our harassment threshold criteria.

Briefly, Eglin AFB estimated the zones of exposure based on impulse, peak pressure, and sound exposure level thresholds (based on our explosive harassment criteria). For example, during an AS gunnery exercise using large arms rounds, a person can fire munitions as individual rounds spaced in time, or rapid fire as a burst of individual rounds. Due to the tight spacing in time, Eglin AFB treats the individual rounds within a burst as a single detonation. For the energy-based metrics, Eglin AFB calculated the impact area of a burst using a source energy spectrum, which is the source spectrum for a single detonation scaled by the number of rounds in a burst. For the pressure-based metrics, the impact area for a burst was calculated as equal to the impact area of a single round. For all metrics, the cumulative impact area of an event consisting of (N) bursts was calculated as the product of the impact area of a single burst and the number of bursts, which would be the case if the bursts were sufficiently spaced in time or location to insure that each burst affects a different set of marine wildlife. Last, Eglin AFB modeled each explosive event for the potential impacts to a derived density of marine mammals within the influence area. Eglin AFB summed the results of all individual events over the year to obtain their take estimate.

Comment 2: The Commission recommended that NMFS require Eglin AFB to (1) model mission scenarios and implement the thresholds for various ordinance types consistently for both PSW and AS gunnery missions and (2) determine the zones of exposure and associated number of takes for the Level B harassment threshold of 177 dB re 1 μPa^2-sec for all PSW and AS gunnery missions that involve more than one bomb, missile, or round.

Response: NMFS disagrees with the Commission's recommendations. Since 2002, we have worked closely with Eglin AFB over several Authorization cycles to develop the methodologies and analytical approaches for PSW and AS gunnery missions and, prior to submitting an application, NMFS and Eglin AFB discuss the methodologies used to ensure that they are still valid and applicable. NMFS agrees with them even though they appear to be different for each mission. These differences are explained and accounted for as follows.

Two separate methods were used to calculate the zones of exposure (the area of potential impact defined as a radius in the application) and to estimate the number of takes of each species for each threshold and criteria (total number of animals exposed to noise levels that may result in Level A or Level B harassment). With the exception of the gunnery rounds, the zones of exposure for all other munitions were based on the detonation/burst of one munition at a given depth; not the total number of munitions planned to be detonated for the duration of the test. On the other hand, Level A and Level B take estimates of each species were calculated by summing together all detonations proposed to occur annually for each munition at a given depth. The methodology and analytical approach for determining the exposure zones and estimating the number of marine mammal takes was fully explained in the application, the proposed rule (78 FR 26586, May 7, 2013), as well as in the previous MMPA authorizations issued to Eglin AFB, and supporting documents issued for these activity. Readers should refer to those documents for additional information.

Comment 3: The Commission recommended that NMFS require Eglin AFB to evaluate its mitigation and monitoring measures to assess their effectiveness in detecting marine mammals and minimizing takes.

Response: We have worked closely with Eglin AFB over the past several Authorization cycles to develop proper mitigation, monitoring, and reporting requirements designed to minimize and detect impacts from the specified activities. In order to ensure that we can make the findings necessary for issuance of an Authorization, we have worked with Eglin AFB to develop comprehensive and acceptable mitigation, monitoring, and reporting requirements. We have determined that the required mitigation, monitoring, and reporting measures within the Authorization are adequate to satisfy the requirements of the MMPA.

Comment 4: The Commission recommended that NMFS work with Eglin AFB to design and conduct the necessary performance verification testing for electronic detection devices under the relevant sea state conditions for AS gunnery missions before changing any sea state restrictions.

Response: NMFS does not believe that additional performance verification testing is necessary for electronic detection devices for AS gunnery mission before changing any sea state restrictions. A sea state of 3 or less, with a maximum wind speed of 10 knots (11.5 mph, 18.5 kmh), is considered a gentle breeze and is fairly common off the Gulf coast of Florida, especially during the summer months; however, although more common during the winter months, a large portion of time can be categorized as a sea state of 4 (11–16 knots (13–18 mph, 21–19 kmh), which is considered a moderate breeze. In 2008, Eglin AFB requested and NMFS authorized an increase in the sea state restriction from 3.5 to 4 for the IHA issued to Eglin AFB for AS gunnery missions. The increase was requested to enable Eglin AFB to conduct AS gunnery missions in the EGTTR during multiple seasons because limiting the availability of EGTTR for AS gunship

use during anything equal to or less than a sea state 3 precluded activities in other months, especially during the winter. Since 2008, nothing has changed to warrant NMFS' reassessment of its previous concurrence with that request. At that time, NMFS explained that under sea state 4 conditions white caps area fairly frequent on the sea surface, but sea spray does not occur.

In general, sea spray, white caps, and large waves that occur when the sea state is at or above 4 can decrease the effectiveness of infrared (IR) detection; however, AS gunnery missions are not conducted if such conditions make observation of the gunnery target (the flare) problematic. Therefore, as long as weather conditions allow the target flare to be observed, NMFS and Eglin AFB believe that marine mammals can also be observed. Furthermore, based on in-the-field experience, USAF subject matter experts have determined that the airborne systems adequately function in a sea state of 4. Additional research conducted by Balacci et al. (2005) indicated that a sea state of 2 or 3 pushed the capabilities of the system; however, this study involved observations looking horizontally along the surface of the water, whereas Eglin AFB is looking straight down, which improves system capabilities in higher sea states.

To gather more information about monitoring during missions, Sensor Operators are continuously scanning the area for traffic, boats, marine mammals, etc. when transiting to and from the water exercise ranges. Eglin AFB will instruct Sensor Operators to begin gathering additional data, such as sea state and level of difficulty in detecting objects at the different sea states, during those transits for comparison purposes, as long as doing so does not interfere with mission training activities. The use of adaptive management allows NMFS to consider new information from different sources, including mitigation and monitoring, to determine (with input from Eglin AFB regarding practicability) if mitigation or monitoring measures should be modified. Measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammal species and their habitat and if the measures are practicable.

Comment 5: Whale and Dolphin Conservation expressed concern regarding the alleged underestimation of marine mammal population densities and exclusion of sperm whales from the analysis. They suggest that more accurate population data should be obtained so that the actual take and harassment numbers can be fully understood and sperm whales be included in the request for takes incidental to PSW and AS gunnery activities.

Response: Density estimates for marine mammals (other than bottlenose dolphins) occurring in the EGTTR were derived from the Navy OPAREA Density Estimates (NODE) for the GOMEX OPAREA report (Navy, 2007), which were determined by either model-derived estimates or literature-derived estimates. In order to address negative bias in the underlying survey results, Eglin AFB adjusted density estimates by using a variety of submergence factors suggested by Moore and Clark (2008). Bottlenose dolphin density estimates were derived from Protected Species Habitat Modeling in the Eglin Gulf Test and Training Range report (Garrison, 2008). NMFS has reviewed the source relied upon to estimate marine mammal densities in the EGTTR and considers them to be the best scientific data available. In order to provide conservative impacts estimates, the greatest density between summer and winter seasons was selected. Sperm whales in the Gulf of Mexico are located in the waters of the continental slope, not in shallow continental shelf waters. For Eglin AFB, the PSW and AS gunnery mission would be located in water less than 200 ft (61 m) deep and 15 to 24 nm (27.8 to 44.5 km) offshore. As a result, sperm whales would not be affected by PSW and AS gunnery activities.

Comment 6: Whale and Dolphin Conservation state that the proposed authorization does not adequately prescribe other means that effect the least practicable adverse impact and recommend additional mitigation measures such as Forward Looking Infrared (FLIR) cameras, time-based aerial surveys over the target area's safety zone instead of a minimum number of orbits, and consideration of alternative target areas if marine mammals are present in the original target area.

Response: NMFS has worked with Eglin AFB over the years to develop the most effective mitigation protocols using the platforms and assets that are available. The required mitigation measures in this document represent the maximum level of effort that Eglin AFB can commit given the number of personnel involved and the number and type of assets and resources available. Eglin AFB has determined that it is impractical to include additional mitigation measures, such as FLIR and time-based aerial surveys. The only activities conducted by Eglin AFB that would require low-light monitoring are Air-to-Surface Gunnery missions, a portion of which will occur during nighttime. During nighttime missions, visual monitoring would be supplemented with infra-red (IR) and TV monitoring. Therefore, adding FLIR cameras, which also detect infra-red heat, would be redundant and impractical. Eglin's LOA application indicated that initial orbits at 6,000-ft AGL altitude would occur approximately over a 15-minute timeframe. Once the area has been confirmed clear of protected species at that altitude, then the aircraft would begin a spiral ascent up to operational altitude (up to 20,000 ft AGL), while continuing to scan for protected species. While there is no time limit for the ascent, Eglin will adopt a 30-minute pre-mission survey requirement (15-minutes for initial orbit and at least 15 minutes for ascent to operational altitude).

Finally, during AS Gunnery and PSW missions, if marine mammals are detected at any time, the mission would be immediately halted and relocated as necessary or suspended until marine mammals have left the area.

The National Defense Authorization Act of 2004 amended the MMPA as it relates to military readiness activities (which Eglin AFB's activities are) and the incidental take authorization process such that "least practicable adverse impact" shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the "military readiness activity." Eglin AFB has a limited number of resources (e.g., personnel and other assets) and the mitigation requirements in this rulemaking represent the maximum level of effort that Eglin AFB can commit.

Comment 7: Whale and Dolphin Conservation expressed concern that the ecological effects of the 2010 Deepwater Horizon oil spill need to be adequately addressed before NMFS issues incidental take authorizations and that any analysis that has been done to date be incorporated into future analysis of the environmental impact associated with issuing the incidental take authorization.

Response: While the EA did not contain a quantitative analysis, Eglin AFB's EA had a qualitative analysis and comprehensive discussion of ongoing and reasonably foreseeable actions in the GOM that included: ongoing oil and gas exploration, development, and production; existing oil and gas infrastructure; commercial fishing;

alternate energy development; military operations; marine vessel traffic; scientific research; recreation and tourism; and marine mining and disposal areas. NMFS also considered the findings presented in a recent study on bottlenose dolphins in Louisiana's Barataria Bay and Florida's Sarasota Bay, which examined the effects of the 2010 Deepwater Horizon oil spill on bottlenose dolphins (Schwacke *et al.*, 2013); however, neither population would be affected by the proposed action due to their location relative to the EGTTR.

Description of Marine Mammals in the Area of the Specified Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. Cetaceans inhabiting the waters of the GOM may be grouped as odontocetes (toothed whales, including dolphins) or mysticetes (baleen whales), but most of the cetaceans occurring in the Gulf are odontocetes. Typically, very few baleen whales are found in the Gulf and none are expected to occur within the study area given the known distribution of these species. Within the bulk of the EGTTR, over the west Florida continental shelf, the most common species is the bottlenose dolphin (Garrison, 2008), and the Atlantic spotted dolphin also occurs commonly over the continental shelf (Fulling *et al.*, 2003). One species of sirenian inhabits the GOM, the West Indian manatee (*Trichechus manatus*), is managed by the U.S. Fish and Wildlife Service and is not considered further in this rule.

Approximately 21 marine mammal species may be found in the vicinity of the proposed action area, the EGTTR. These species are the Bryde's whale (*Balaenoptera edeni*), sperm whale (*Physeter macrocephalus*), dwarf sperm whale (*Kogia sima*), pygmy sperm whale (*K. breviceps*), Atlantic bottlenose dolphin (*Tursiops truncatus*), Atlantic spotted dolphin (*Stenella frontalis*), pantropical spotted dolphin (*S. atenuarta*), Blainville's beaked whale (*Mesoplodon densirostris*), Cuvier's beaked whale (*Ziphius cavirostris*), Gervais' beaked whale (*M. europaeus*), Clymene dolphin (*S. clymene*), spinner dolphin (*S. longirostris*), striped dolphin (*S. coeruleoalba*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), Risso's dolphin (*Grampus griseus*), Fraser's dolphin (*Lagenodelphis hosei*), melon-headed whale (*Peponocephala electra*), rough-toothed dolphin (*Steno bredanensis*), and short-finned pilot whale (*Globicephala macrorhynchus*). Of these species, only the sperm whale is listed as endangered under the Endangered Species Act (ESA) and as depleted throughout its range under the MMPA. While some of the other species listed here have depleted status under the MMPA, none of the GOM stocks of those species are considered depleted. Eglin AFB's 2011 MMPA application contains a detailed discussion on the description, status, distribution, regional distribution, diving behavior, and acoustics and hearing for the marine mammals in the EGTTR. Additionally, more detailed information on these species can be found in Würsig *et al.* (2000), NMFS' 2008 EA (see **ADDRESSES**), and in the NMFS U.S. Atlantic and GOM Stock Assessment Reports (SARs; Waring *et al.*, 2010). This latter document is available at: *http://www.nefsc.noaa.gov/publications/tm/tm210/.*

The species most likely to occur in the area of Eglin AFB's proposed activities for which takes have been requested include: Atlantic bottlenose dolphin; Atlantic spotted dolphin; pantropical spotted dolphin; spinner dolphin; and dwarf and pygmy sperm whales. Bryde's whales, sperm whales, Blainville's beaked whales, Cuvier's beaked whales, Gervais' beaked whales, killer whales, false killer whales, pygmy killer whales, Risso's dolphins, Fraser's dolphins, striped dolphins, Clymene dolphins, rough-toothed dolphins, short-finned pilot whales, and melon-headed whales are rare in the project area and are not anticipated to be impacted by the PSW and AS gunnery mission activities. Therefore, these species are not considered further in this rule.

TABLE 3—MARINE MAMMAL DENSITY ESTIMATES WITHIN THE STUDY AREA

Species	Density (animals/km^2)	Dive profile (% of time at surface)	Adjusted density (animals/km^2)
Bottlenose dolphin	0.442600	n/a	0.442600
Atlantic spotted dolphin	0.105700	30	0.352333
Pantropical spotted dolphin	0.042870	30	0.142900
Spinner dolphin	0.038100	30	0.127000
Dwarf/pygmy sperm whale	0.000381	20	0.001905

With one exception, marine mammal densities estimates for species which takes have been requested, as provided in the LOA application, are consistent with those included in a recent LOA request and LOA addendum for Navy actions conducted offshore of Navy Surface Warfare Center Panama City Division (75 FR 3395, January 21, 2010). The geographic area covered by that LOA overlaps the area associated with PSW and AS gunnery activities, and is considered applicable for the purpose of estimating marine mammal occurrence and densities. The one exception is bottlenose dolphin, for which density estimates were recently provided through a Department of Defense-funded study.

For all species other than the bottlenose dolphin, density estimates were derived from the Navy OPAREA Density Estimates (NODE) for the GOMEX OPAREA report (DON, 2007). Densities were determined using one of two methods: (1) model-derived estimates; or (2) SAR or other literature-derived estimates. For the model-based approach, density estimates were calculated for each species within areas containing survey effort. A relationship between these density estimates and associated environmental parameters such as depth, slope, distance from the shelf break, sea surface temperature, and chlorophyll-*a* concentration was formulated using generalized additive models. This relationship was then used to generate a two-dimensional density surface for the region by predicting densities in areas where no survey data exist. All analyses for cetaceans in the GOM were based on data collected through NMFS-derived vessel surveys conducted between 1996 and 2004. Species-specific density estimates derived through spatial modeling were compared with abundance estimates found in the most current SAR to ensure consistency.

Cetacean density estimates provided by various researchers often do not contain adjustments for perception or

availability bias. Perception bias refers to the failure of observers to detect animals, although they are present in the survey area and available to be seen. Availability bias refers to animals that are in the survey area, but are not able to be seen because they are submerged when observers are present. Perception and availability bias result in the underestimation of abundance and density numbers (negative bias). The density estimates provided in the NODE report are not corrected for negative bias and, therefore, likely underestimate density. In order to address potential negative bias, density estimates were adjusted using submergence factors. Although submergence time versus surface time probably varies between and among species populations based on geographic location, season, and other factors, submergence times suggested by Moore and Clark (1998) were used for this rule.

Bottlenose dolphin density estimates were derived from Protected Species Habitat Modeling in the EGTTR (Garrison, 2008). NMFS developed habitat models using recent aerial survey line transect data collected during winter and summer. In combination with remotely sensed habitat parameters (sea surface temperature and chlorophyll), these data were used to develop spatial density models for cetaceans within the continental shelf and coastal waters of the eastern GOM. Encounter rates during the aerial surveys were corrected for sighting probabilities and the probability that animals were available on the surface to be seen. Given that the survey area completely overlaps the present study area and that these survey data are the most recent and best available, these models are considered to best reflect the occurrence of bottlenose dolphins within the study area. Density estimates were calculated for a number of subareas within the EGTTR, and also aggregated into four principal area categories: (1) North-Inshore; (2) South-Inshore; (3) North-Offshore; and (4) South-Offshore. The proposed action would occur within W–151A and W–151B, which are located in the northernmost portion of the EGTTR in water depths between 30 and 350 m; however, all missions would occur in water depths less than 200 m. Therefore, density in the North-Offshore area is considered to be the most applicable. In order to provide conservative impact estimates, the greatest density between summer and winter seasons was selected, resulting in an overall density estimate of 0.4426 bottlenose dolphins per square kilometer (km^2) to be used in this rule.

Potential Effects of the Specified Activity on Marine Mammals

PSW and AS gunnery operations have the potential to impact marine mammals by exposing them to impulsive noise and pressure waves generated by ordnance detonation at or near the surface of the water (maximum range of 25 ft (7.6 m) height and 80 ft (24 m) depth). Exposure to energy or pressure resulting from these detonations could result in non-lethal injury (Level A harassment) and disturbance (Level B harassment). Takes in the form of serious injury and mortality are neither anticipated nor requested. For PSW missions, a maximum of six detonations annually were analyzed to assess potential impacts to marine mammals, including two live JASSM, two live single SDB, and two live double SDB missions. This averages one mission every two months, although the actual timing of missions over the 5-year period is unknown. Only one mission would occur in any 24-hour period. A maximum of 70 annual AS gunnery missions were analyzed, which averages one mission approximately every 5 days. Live fire lasts for approximately 30 minutes per mission, which would result in a maximum of one-half hour of noise producing activities every 5 days occurring at a discreet, variable location within the 2,500 nm^2 area of W–151A (although activities could occur within the larger, overall 10,000 nm^2 area of W–151). The potential effects of sound from the proposed PSW and AS gunnery missions may include one or more of the following: tolerance; masking of natural sounds; disturbance; stress response; and temporary or permanent hearing impairment (Richardson *et al.*, 1995). As outlined in previous NMFS documents, the effects of sound on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

- The sound may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient sound level, the hearing threshold of the animal at relevant frequencies, or both);
- The sound may be audible but not strong enough to elicit any overt behavioral response;
- The sound may elicit reactions of varying degrees and variable relevance to the well-being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area until the stimulus ceases, but potentially for longer periods of time;
- Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;
- Any anthropogenic sound that is strong enough to be heard has the potential to result in masking, or reduce the ability of a marine mammal to hear biological sounds at similar frequencies, including calls from conspecifics and underwater environmental sounds such as surf sound;
- If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to sound, it is possible that there could be sound-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and
- Very strong sounds have the potential to cause a temporary or permanent reduction in hearing sensitivity, also referred to as threshold shift. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment (PTS). In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Tolerance

Numerous studies have shown that underwater sounds are often readily detectable by marine mammals in the water at distances of many kilometers. However, other studies have shown that marine mammals at distances more than a few kilometers away often show no apparent response to activities of various types (Miller *et al.*, 2005). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from sources such as airgun pulses or vessels under some

conditions, at other times, mammals of all three types have shown no overt reactions (e.g., Malme *et al.*, 1986; Richardson *et al.*, 1995; Madsen and Mohl, 2000; Croll *et al.*, 2001; Jacobs and Terhune, 2002; Madsen *et al.*, 2002; Miller *et al.*, 2005).

Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, the detection of frequencies above those of the masking stimulus decreases. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995) argued that the maximum radius of influence of an industrial noise (including broadband low-frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (i.e., surf noise, prey noise, etc.) (Richardson *et al.*, 1995).

The echolocation calls of toothed whales are subject to masking by high-frequency sound. Human data indicate that low-frequency sounds can mask high-frequency sounds (i.e., upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (e.g., adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the higher frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.*, 1980). A study by Nachtigall and Supin (2008) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals. Holt *et al.* (2009) measured killer whale call source levels and background noise levels in the one to 40 kHz band and reported that the whales increased their call source levels by one dB SPL for every one dB SPL increase in background noise level. Similarly, another study on St. Lawrence River belugas reported a similar rate of increase in vocalization activity in response to passing vessels (Scheifele *et al.*, 2005).

Although masking is a phenomenon which may occur naturally, the introduction of loud anthropogenic sounds into the marine environment at frequencies important to marine mammals increases the severity and frequency of occurrence of masking. For example, if a baleen whale is exposed to continuous low-frequency sound from an industrial source, this would reduce the size of the area around that whale within which it can hear the calls of another whale. The components of background noise that are similar in frequency to the signal in question primarily determine the degree of masking of that signal. In general, little is known about the degree to which marine mammals rely upon detection of sounds from conspecifics, predators, prey, or other natural sources. In the absence of specific information about the importance of detecting these natural sounds, it is not possible to predict the impact of masking on marine mammals (Richardson *et al.*, 1995). In general, masking effects are expected to be less severe when sounds are transient than when they are continuous. Masking is typically of greater concern for those marine mammals that utilize low frequency communications, such as baleen whales and, as such, is not likely to occur for marine mammals in the EGTTR.

Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (in both nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.*, 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of the sound to biologically relevant sounds in the animal's environment (i.e., calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.*, 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (i.e., proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Because the few available studies show wide variation in response to underwater sound, it is difficult to quantify exactly how sound from PSW and AS gunnery missions would affect marine mammals. Exposure of marine mammals to sound sources can result in, but is not limited to, no response or any of the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; avoidance; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.*, 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). A more recent review (Nowacek *et al.*, 2007) addresses studies conducted since 1995 and focuses on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. The following sub-sections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential

sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Estimates of the types of behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists.

Flight Response—A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). Flight responses have been speculated as being a component of marine mammal strandings associated with sonar activities (Evans and England, 2001).

Response to Predator—Evidence suggests that at least some marine mammals have the ability to acoustically identify potential predators. For example, harbor seals that reside in the coastal waters off British Columbia are frequently targeted by certain groups of killer whales, but not others. The seals discriminate between the calls of threatening and non-threatening killer whales (Deecke *et al.*, 2002), a capability that should increase survivorship while reducing the energy required for attending to and responding to all killer whale calls. The occurrence of masking or hearing impairment provides a means by which marine mammals may be prevented from responding to the acoustic cues produced by their predators. Whether or not this is a possibility depends on the duration of the masking/hearing impairment and the likelihood of encountering a predator during the time that predator cues are impeded.

Diving—Changes in dive behavior can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive. Variations in dive behavior may reflect interruptions in biologically significant activities (e.g., foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (e.g., increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of ship strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating intepretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.*, 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the equivocal nature of behavioral effects and consequent difficulty in defining and predicting them.

Due to past incidents of beaked whale strandings associated with sonar operations, feedback paths are provided between avoidance and diving and indirect tissue effects. This feedback accounts for the hypothesis that variations in diving behavior and/or avoidance responses can possibly result in nitrogen tissue supersaturation and nitrogen off-gassing, possibly to the point of deleterious vascular bubble formation (Jepson *et al.*, 2003). Although hypothetical, the potential process is currently popular and controversial.

Foraging—Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. Noise from seismic surveys was not found to impact the feeding behavior in western grey whales off the coast of Russia (Yazvenko *et al.*, 2007) and sperm whales engaged in foraging dives did not abandon dives when exposed to distant signatures of seismic airguns (Madsen *et al.*, 2006). Balaenopterid whales exposed to moderate low-frequency signals similar to the ATOC sound source demonstrated no variation in foraging activity (Croll *et al.*, 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.*, 2004). Although the received sound pressure level at the animals was similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. A determination of whether foraging disruptions incur fitness consequences will require information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Breathing—Variations in respiration naturally vary with different behaviors and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.*, 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.*, 2001; Kastelein *et al.*, 2006a) and emissions for underwater data transmission (Kastelein *et al.*, 2005). However, exposure of the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.*, 2006a), again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

Social Relationships—Social interactions between mammals can be affected by noise via the disruption of communication signals or by the displacement of individuals. Disruption of social relationships therefore depends on the disruption of other behaviors (e.g., caused avoidance, masking, etc.) and no specific overview is provided

here. However, social disruptions must be considered in context of the relationships that are affected. Long-term disruptions of mother/calf pairs or mating displays have the potential to affect the growth and survival or reproductive effort/success of individuals, respectively.

Vocalizations (also see Masking Section)—Vocal changes in response to anthropogenic noise can occur across the repertoire of sound production modes used by marine mammals, such as whistling, echolocation click production, calling, and singing. Changes may result in response to a need to compete with an increase in background noise or may reflect an increased vigilance or startle response. For example, in the presence of low-frequency active sonar, humpback whales have been observed to increase the length of their "songs" (Miller *et al.*, 2000; Fristrup *et al.*, 2003), possibly due to the overlap in frequencies between the whale song and the low-frequency active sonar. A similar compensatory effect for the presence of low frequency vessel noise has been suggested for right whales; right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). Killer whales off the northwestern coast of the United States have been observed to increase the duration of primary calls once a threshold in observing vessel density (e.g., whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.*, 2004). In contrast, both sperm and pilot whales potentially ceased sound production during the Heard Island feasibility test (Bowles *et al.*, 1994), although it cannot be absolutely determined whether the inability to acoustically detect the animals was due to the cessation of sound production or the displacement of animals from the area.

Avoidance—Avoidance is the displacement of an individual from an area as a result of the presence of a sound. Richardson *et al.*, (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals. It is qualitatively different from the flight response, but also differs in the magnitude of the response (i.e., directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. Longer term displacement is possible, however, which can lead to changes in abundance or distribution patterns of the species in the affected region if they do not become acclimated to the presence of the sound (Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006). Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.*, 2001; Finneran *et al.*, 2003; Kastelein *et al.*, 2006a; Kastelein *et al.*, 2006b). Short term avoidance of seismic surveys, low frequency emissions, and acoustic deterrants has also been noted in wild populations of odontocetes (Bowles *et al.*, 1994; Goold, 1996; 1998; Stone *et al.*, 2000; Morton and Symonds, 2002) and to some extent in mysticetes (Gailey *et al.*, 2007), while longer term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to be due to the presence of chronic vessel noise (Haviland-Howell *et al.*, 2007; Miksis-Olds *et al.*, 2007).

Orientation—A shift in an animal's resting state or an attentional change via an orienting response represent behaviors that would be considered mild disruptions if occurring alone. As previously mentioned, the responses may co-occur with other behaviors; for instance, an animal may initially orient toward a sound source, and then move away from it. Thus, any orienting response should be considered in context of other reactions that may occur.

Stress Response

An acoustic source is considered a potential stressor if, by its action on the animal, via auditory or non-auditory means, it may produce a stress response in the animal. Here, the stress response will refer to an increase in energetic expenditure that results from exposure to the stressor and which is predominantly characterized by either the stimulation of the sympathetic nervous system (SNS) or the hypothalamic-pituitary-adrenal (HPA) axis (Reeder and Kramer, 2005). The SNS response to a stressor is immediate and acute and is characterized by the release of the catecholamine neurohormones norepinephrine and epinephrine (i.e., adrenaline). These hormones produce elevations in the heart and respiration rate, increase awareness, and increase the availability of glucose and lipids for energy. The HPA response is ultimately defined by increases in the secretion of the glucocorticoid steroid hormones, predominantly cortisol in mammals. The presence and magnitude of a stress response in an animal depends on a number of factors. These include the animal's life history stage (e.g., neonate, juvenile, adult), the environmental conditions, reproductive or developmental state, and experience with the stressor. Not only will these factors be subject to individual variation, but they will also vary within an individual over time. The stress response may or may not result in a behavioral change, depending on the characteristics of the exposed animal. However, provided a stress response occurs, we assume that some contribution is made to the animal's allostatic load. Any immediate effect of exposure that produces an injury is assumed to also produce a stress response and contribute to the allostatic load. Allostasis is the ability of an animal to maintain stability through change by adjusting its physiology in response to both predictable and unpredictable events (McEwen and Wingfield, 2003). If the acoustic source does not produce tissue effects, is not perceived by the animal, or does not produce a stress response by any other means, we assume that the exposure does not contribute to the allostatic load. Additionally, without a stress response or auditory masking, it is assumed that there can be no behavioral change.

Hearing Threshold Shift

In mammals, high-intensity sound may rupture the eardrum, damage the small bones in the middle ear, or over stimulate the electromechanical hair cells that convert the fluid motions caused by sound into neural impulses that are sent to the brain. Lower level exposures may cause a loss of hearing sensitivity, termed a threshold shift (TS) (Miller, 1974). Incidence of TS may be either permanent, referred to as permanent threshold shift (PTS), or temporary, referred to as temporary threshold shift (TTS). The amplitude, duration, frequency, and temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, generally, so does the amount of TS and recovery time. Human non-impulsive noise exposure guidelines are based on exposures of equal energy (the same SEL) producing equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH 1998). Until recently, previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.*, 2007). Three newer studies, two by Mooney *et al.* (2009a, 2009b) on a single bottlenose dolphin either exposed to playbacks of Navy MFAS or octave-band noise (4–8 kHz) and one by Kastak *et al.* (2007) on

a single California sea lion exposed to airborne octave-band noise (centered at 2.5 kHz), concluded that for all noise exposure situations the equal energy relationship may not be the best indicator to predict TTS onset levels. Generally, with sound exposures of equal energy, those that were quieter (lower sound pressure level [SPL]) with longer duration were found to induce TTS onset more than those of louder (higher SPL) and shorter duration (more similar to noise from AS gunnery exercises). For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.*, 1966; Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). However, these studies highlight the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts.

PTS consists of non-recoverable physical damage to the sound receptors in the ear, which can include total or partial deafness, or an impaired ability to hear sounds in specific frequency ranges; PTS is considered Level A harassment. TTS is recoverable and is considered to result from temporary, non-injurious impacts to hearing-related tissues; TTS is considered Level B harassment.

Permanent Threshold Shift

Auditory trauma represents direct mechanical injury to hearing related structures, including tympanic membrane rupture, disarticulation of the middle ear ossicles, and trauma to the inner ear structures such as the organ of Corti and the associated hair cells. Auditory trauma is irreversible and considered to be an injury that could result in PTS. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids. In some cases, there can be total or partial deafness across all frequencies, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. There is no empirical data for onset of PTS in any marine mammal, and therefore, PTS- onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (i.e., 40 dB of TTS). Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals.

Temporary Threshold Shift

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS as Level B Harassment, not Level A Harassment (injury); however, NMFS does not consider the onset of TTS to be the lowest level at which Level B Harassment may occur (see Behavior section below).

Southall *et al.* (2007) considers a 6 dB TTS (i.e., baseline hearing thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS onset. TTS in bottlenose dolphin hearing have been experimentally induced. For example, Finneran *et al.* (2002) exposed a trained captive bottlenose dolphin to a seismic watergun simulator with a single acoustic pulse. No TTS was observed in the dolphin at the highest exposure condition (peak: 207 kPa [30psi]; peak-to-peak: 228 dB re: 1 microPa; SEL: 188 dB re 1 microPa^2-s). Schludt *et al.* (2000) demonstrated temporary shifts in masked hearing thresholds in five bottlenose dolphins occurring generally between 192 and 201 dB rms (192 and 201 dB SEL) after exposure to intense, non-pulse, 1–s tones at, 3kHz, 10kHz, and 20 kHz. TTS onset occurred at mean sound exposure level of 195 dB rms (195 dB SEL). At 0.4 kHz, no subjects exhibited threshold shifts after SPL exposures of 193dB re: 1 microPa (192 dB re: 1 microPa^2-s). In the same study, at 75 kHz, one dolphin exhibited a TTS after exposure at 182 dB SPL re: 1 microPa but not at higher exposure levels. Another dolphin experienced no threshold shift after exposure to maximum SPL levels of 193 dB re: 1 microPa at the same frequency. Frequencies of explosives used at MCAS Cherry Point range from 1–25 kHz; the range where dolphin TTS onset occurred at 195 dB rms in the Schludt *et al.* (2000) study.

Preliminary research indicates that TTS and recovery after noise exposure are frequency dependent and that an inverse relationship exists between exposure time and sound pressure level associated with exposure (Mooney *et al.*, 2005; Mooney, 2006). For example, Nachtigall *et al.* (2003) measured TTS in a bottlenose dolphin and found an average 11 dB shift following a 30 minute net exposure to OBN at a 7.5 kHz center frequency (max SPL of 179 dB re: 1 microPa; SEL: 212–214 dB re:1 microPa^2-s). No TTS was observed after exposure to the same duration and frequency noise with maximum SPLs of 165 and 171 dB re:1 microPa. After 50 minutes of exposure to the same 7.5 kHz frequency OBN, Natchigall *et al.* (2004) measured a 4 -8 dB shift (max SPL: 160dB re 1microPa; SEL: 193–195 dB re:1 microPa^2-s). Finneran *et al.* (2005) concluded that a sound exposure level of 195 dB re 1 μPa^2-s is a reasonable threshold for the onset of TTS in bottlenose dolphins exposed to mid-frequency tones.

Estimated Take

PSW Missions

For the acoustic analysis of PSW activities, the exploding charge is characterized as a point source. The components of PSW activities pertinent to estimating impacts include the location of the explosions relative to the water surface and the number of explosions.

SDBs are intended to either strike a target on the surface of the water or detonate in the air over a target at an altitude of up to 25 ft (7.6 m) above the surface of the water. It is assumed that a surface target would be impacted at a point approximately five feet (1.5 m) above the surface. To calculate the range to NMFS' harassment thresholds, these two distances are used to bound the potential height of the explosion (although detonations could occur at any point in between). The effect of the target itself on the propagation of the shock wave into the water column is omitted for the purpose of determining the range to the harassment thresholds. This is considered to be a conservative measure because the target would likely reflect and diffuse the explosive pressure wave, but would not amplify or focus it. SDB "double shots" would involve two bombs being deployed from the same aircraft to strike the same target within a maximum of five seconds of each other. Under the "double shot" scenario, the NEW of each bomb is added in order to calculate the distance to energy thresholds; however, the pressure component is not

additive, and pressure estimates are derived from a single charge weight.

The JASSM is intended to impact a target located on the surface of the water. Similar to the description of the SDB above, it is assumed that the missile may strike the target at some distance about the surface. However, the JASSM is substantially heavier than the SDB (approximately 2,240 lbs versus 285 lbs), and would potentially travel at a greater velocity on impact. Therefore, the JASSM would impact the target with greater force, and it is anticipated that the missile could puncture the target and explode in the water column. Under this type of scenario, detonation occurs a maximum of 120 milliseconds after contact with the water, which corresponds to a depth of 70 to 80 ft (21 to 24 m). As a result, impact range calculations are bounded by depth categories of 1 ft (0.3 m) and greater than 20 ft (6.1 m). Only one JASSM would be deployed per mission (i.e., no "double shots"), and both energy and pressure estimates are based on the NEW of one missile.

Table 4 provides the estimated range, or radius, from the detonation point to the various thresholds under summer and winter scenarios. The range is then used to calculate the total area of the zone of influence (ZOI). The Level B harassment (behavioral) threshold (177 dB re 1 μPa^2-s EFD) is not included. Sub-TTS harassment is considered to occur when animals are exposed to repetitive disturbance, which for underwater impulsive noise is considered to be more than one detonation within a 24-hour period. No more than one explosion associated with PSW activities will occur within any 24-hour period. The SDB "double shot" is considered to be one detonation because the two explosions are intended to occur within five seconds of each other. In-water ranges for the 30.5 and 13 psi-msec thresholds for explosions occurring in the air are negligible.

TABLE 4—ESTIMATED THRESHOLD RADII (IN METERS) FOR PSW ACTIVITIES

Ordinance	NEW (lbs)	Height or Depth of Explosion (m)	Mortality	Level A Harassment		Level B Harassment	
			30.5 psi-msec	205 dB re 1 μPa^2-s EFD	13 psi-msec	82 dB re 1 μPa^2-s EFD	23 psi peak
Summer:							
Single SDB	48	1.5 height	0	12	0	47	447
		7.6 height	0	12	0	48	447
Double SDB ...	96	1.5 height	0	16	0	65	550
		7.6 height	0	17	0	66	550
JASSM	300	0.3 depth	75	170	130	520	770
		>6.1 depth	320	550	1030	2490	770
Winter							
Single SDB	48	1.5 height	0	12	0	47	471
		7.6 height	0	12	0	48	471
Double SDB ...	96	1.5 height	0	16	0	65	594
		7.6 height	0	16	0	66	594
JASSM	300	0.3 depth	75	170	130	580	871
		>6.1 depth	320	590	1096	3250	871

The ZOIs calculated by using the threshold ranges in Table 4 are combined with the number of live shots (Table 1) and marine mammal densities (Table 3) to estimate the number of animals affected. Because of the mission location in relatively shallow continental shelf waters ranging from approximately 40 to 50 m, the species considered to be potentially affected by PSW mission activities include the bottlenose dolphin, Atlantic spotted dolphin, dwarf sperm whale, and pygmy sperm whale. Potential exposure to energy and pressure resulting from detonations could theoretically occur at the surface or at any number of depths below the surface with differing consequences. As a conservative measure, a mid-depth scenario was selected by Eglin AFB to ensure the greatest direct path for the harassment ranges, and to give the greatest impact range for the injury thresholds.

Tables 5, 6, and 7 provide the annual potential number of exposures associated with mortality, Level A harassment, and Level B harassment. In each case, a range of numbers is provided. The ranges represent the minimum and maximum number of potential takes, based on various combinations of explosion height, explosion depth, and season. In cases where dual criteria exist, the threshold with the greatest distance and corresponding ZOI is used. For example, for in-water JASSM detonations, the 23 psi threshold provides the largest Level B harassment zone when detonations occur near the surface, while the 182 dB EFD threshold provides the largest Level B harassment zone at depth.

TABLE 5—NUMBER OF POTENTIAL MARINE MAMMAL EXPOSURES, MORTALITIES (30.5 PSI-MSEC) FROM PSW EXERCISES

Species	Number of potential exposures, single SDB (2 shots)	Number of potential exposures, double SDB (2 shots)	Number of potential exposures, single JASSM (2 shots)	Total number potential exposures
Atlantic bottlenose dolphin	0	0	0.0156–0.2848	0.0156–0.2848
Atlantic spotted dolphin	0	0	0.0125–0.2267	0.0125–0.2267
Dwarf/Pygmy sperm whale	0	0	0.0001–0.0012	0.0001–0.0012

TABLE 6—NUMBER OF POTENTIAL MARINE MAMMAL EXPOSURES, LEVEL A HARASSMENT FROM PSW EXERCISES

Species	Number of potential exposures, single SDB (2 shots)	Number of potential exposures, double SDB (2 shots)	Number of potential exposures, single JASSM (2 shots)	Total number potential exposures
Atlantic bottlenose dolphin	0.00040	0.00080	0.08037–3.34052	0.08157–3.34172
Atlantic spotted dolphin	0.00032	0.00064	0.06398–2.65923	0.06494–2.66019
Dwarf/Pygmy sperm whale	0.000002	0.000003	0.00035–0.01438	0.000355–0.014385

TABLE 7—NUMBER OF POTENTIAL MARINE MAMMAL EXPOSURES, LEVEL B HARASSMENT FROM PSW EXERCISES

Species	Number of potential exposures, single SDB (2 shots)	Number of potential exposures, double SDB (2 shots)	Number of potential exposures, single JASSM (2 shots)	Total number potential exposures
Atlantic bottlenose dolphin	0.55566–0.61693	0.84124–0.98122	0.75197–29.37372	2.14887–30.97187
Atlantic spotted dolphin	0.44233–0.49111	0.66967–0.78110	0.59861–23.38304	1.71061–24.65525
Dwarf/Pygmy sperm whale	0.00239–0.00266	0.00362–0.00422	0.00324–0.12643	0.00925–0.13331

The preceding tables illustrate that the potential impacts to marine mammals would primarily be the result of JASSM detonations. Eglin AFB does not anticipate that any marine mammals would be exposed to positive impulse pressure levels associated with serious injury or mortalities. In the absence of mitigation measures, up to approximately 0.3 bottlenose dolphins and 0.2 Atlantic spotted dolphins per year could be exposed to the 30.5 psi-msec threshold; however, where less than 0.5 animals are affected, no take is assumed. Pygmy and dwarf sperm whales are not expected to be affected.

A maximum of approximately three bottlenose dolphins and three Atlantic spotted dolphins could be exposed to noise and/or pressure levels associated with Level A harassment, depending on the season and depth of the JASSM detonation. Similarly, up to a maximum of 31 bottlenose dolphins and 25 Atlantic spotted dolphins could be exposed to level associated with Level B harassment (TTS). Essentially, no pygmy or dwarf sperm whales are expected to experience either Level A or Level B harassment.

AS Gunnery Missions

Table 8 provides the estimated range from the detonation point to the various thresholds. This range, or radius, is then used to calculate the total area affected by a gunnery round. For this analysis, it is assumed that all rounds strike the water and detonate at or just below the surface of the water, although this assumption is somewhat conservative because some rounds may strike the target and introduce less noise into the water. The ranges to the thresholds were calculated for two seasons (summer and winter) and depth strata (80 m and 160 m) in order to reasonably bound the environmental conditions under which AS gunner activities would occur. As a conservative measure, the greatest range within each season and depth strata is used in take estimate calculations. In addition, where dual criteria exist, the criteria resulting in the most conservative estimate (i.e., greater number of takes) are used.

TABLE 8—ESTIMATED THRESHOLD RADII (IN METERS) FOR AS GUNNERY ACTIVITIES

Ordnance type	Mortality	Level A harassment		Level B harassment		
	30.5 psi-msec	205 dB EFD	13 psi-msec	182 dB EFD	23 psi	177 dB EFD
105 mm FU	3.8	22.81	6.96	158.26	216.37	281.78
105 mm TR	2.45	8.86	3.29	49.79	91.45	90.46
40 mm	3.07	12.52	3.69	74.27	123.83	142.11
25 mm	1.26	0	2.52	23.83	52.27	41.24

As described in Section 6 of the LOA application, the number of events may vary for energy and pressure metrics. For energy metrics, the number of events equates to the number of rounds expended and released energy is evaluated as an additive exposure. Pressure-based thresholds are based on the maximum value received by the animal. The method for estimating the number of firing events for 40 mm and 25 mm rounds, as they related to pressure metrics, is based on the firing protocol. These rounds are typically fired in bursts, with each burst expended within a 2- to 10-second time frame. Given the average cetacean density with assumed uniform distribution, and average swim speed of three knots, there would not be sufficient time for new animals to enter the ZOI within the time frame of a single burst. Therefore, only the peak pressure of a single burst would be experienced within a given ZOI. For 40 mm rounds, a typical mission includes 64 rounds, with approximately 20 rounds per burst. Based on the tight target area and small "miss" distance, all rounds in a burst are expected to enter the water within 5 m of the target. As a result, take calculations for 40 mm rounds are based on the total number of rounds fired per year divided by 20. Similarly, for 25 mm rounds, missions typically include 560 rounds fired in bursts of 100 rounds, and pressure-based take calculations are based on the total number of rounds divided by 100. For energy metrics, however, all rounds are used for estimating exposures.

The firing protocol for 105 mm rounds does not involve bursts of multiple rounds at a time; these round are fired singly, with up to a 30-second interval between rounds, which results

in approximately two rounds per minute. Pressure-based exposure calculations are performed based on the total number of rounds expended.

Annual marine mammal takes from AS gunnery activities are then calculated using the adjusted marine mammal density estimates, the ZOI of each type of round fired, and the total number of events per year. Table 9 provides the total number of potentially affected (exposed) marine mammals for all combined gunnery activities, including 105 mm (FU and TR), 40 mm, and 25 mm rounds. The numbers in Table 9 represent the maximum number of exposures considered reasonably possible. It is important to note that these exposure estimates are derived without consideration of mitigation measures (except use of the 105 mm TR, an operational mitigation measure). For Level A harassment calculations, the ZOI corresponding to the 205 dB EFD is used because the criterion results in the most conservative take estimate. Similarly, for Level B physiological harassment calculations, the ZOI corresponding to the 182 dB EFD is used because this criterion results in the most conservative take estimate even though the 23 psi threshold radii are greater than the radii for the 182 dB EFD threshold.

TABLE 9—ANNUAL NUMBER OF MARINE MAMMAL TAKES FROM AS GUNNERY ACTIVITIES

Species	Adjusted density (#/km^2)	Mortality	Level A harassment		Level B harassment (TTS)		Level B harassment (behavioral)
		30.5 psi-msec	205 dB EFD	13 psi-msec	182 dB EFD	23 psi peak	177 dB EFD
Bottlenose dolphin	0.442600	0.03012721	1.666395	0.078538	96.08673	70.81186	316.66708
Atlantic spotted dolphin	0.352333	0.02398285	1.326539	0.062521	76.49011	56.36998	252.08374
Pantropical spotted dolphin	0.142900	0.00021201	0.011511	0.000688	0.63857	0.65954	2.07718
Spinner dolphin	0.127000	0.00018842	0.010230	0.000611	0.56752	0.58615	1.84606
Dwarf/pygmy sperm whale	0.001905	0.00012967	0.007172	0.000338	0.41357	0.30478	1.36297

Explosive criteria and thresholds for assessing impacts of explosions on marine mammals were originally developed for the shock trials of the *USS Seawolf* and *USS Winston S. Churchill*. NMFS provided a detailed discussion in its promulgation of regulations for issuing LOAs to Eglin AFB for Precision Strike Weapon testing activity (71 FR 44001, August 3, 2006), which is not repeated here. Please refer to that document for this background information. However, one part of the analysis has changed. That information is provided here.

TABLE 10—CURRENT NMFS ACOUSTIC CRITERIA WHEN ADDRESSING HARASSMENT FROM EXPLOSIVES

Level B Behavior	176 dB 1/3 Octave SEL (sound energy level).
Level B TTS Dual Criterion.	182 dB 1/3 Octave SEL.
	23 psi (peak pressure).
Level A PTS (permanent threshold shift).	205 dB SEL.
Level A Injury	13 psi-msec.
Mortality	30.5 psi-msec.

Subsequent to the issuance of the USAF 2002 PEA, NMFS updated one of the dual criteria related to the onset level for temporary threshold shift (TTS; Level B harassment). The USAF 2002 PEA describes the onset of TTS by a single explosion (impulse) based on the criterion in use at that time. Newly available information based on lab controlled experiments that used a seismic watergun to induce TTS in one beluga whale and one bottlenose dolphin (Finneran *et al.*, 2002) showed measured TTS_2 (TTS level 2 min after exposure) was 7 and 6 dB in the beluga at 0.4 and 30 kHz, respectively, after exposure to intense single pulses at 226 dB re: 1 µPa p-p (peak to peak). This sound pressure level (SPL) is equivalent to 23 pounds per square inch (psi). Hearing threshold returned to within 2 dB of the pre-exposure value within 4 min of exposure. No TTS was observed in the bottlenose dolphin at the highest exposure condition (228 dB re 1 µPa p-p). Therefore, NMFS updated the SPL from impulse sound that could induce TTS to 23 psi, from the previous 12 psi. Table 10 in this document outlines the acoustic criteria used by NMFS when addressing noise impacts from explosives. These criteria remain consistent with criteria established for other activities in the EGTTR and other acoustic activities authorized under sections 101(a)(5)(A) and (D) of the MMPA. The 23 psi criterion is used in this document and NMFS' 2008 EA for evaluating the potential for the onset of TTS (Level B harassment) in marine mammals. Additional information on the derivation of the 23 psi criterion can be found in the *Final Environmental Impact Statement/Overseas Environmental Impact Statement for the Shock Trial of the Mesa Verde (LPD 19)* (Department of the Navy, 2008).

Table 11 outlines the total annual authorized Level A and Level B harassment takes for each species for both PSW and AS gunnery activities combined.

TABLE 11—AUTHORIZED ANNUAL LEVEL A AND LEVEL B TAKES FOR PSW AND AS GUNNERY ACTIVITIES

Species	Level A harassment	Level B harassment
Bottlenose dolphin	5	444
Atlantic spotted dolphin	4	353
Pantropical spotted dolphin	0	3
Spinner dolphin	0	3
Dwarf/pygmy sperm whale	0	2

Anticipated Effects on Habitat

The primary source of marine mammal habitat impact is noise resulting from live PSW and AS gunnery missions. However, the noise does not constitute a long-term physical alteration of the water column or bottom topography, is not expected to affect prey availability, is of limited duration, and is intermittent in time. Surface vessels associated with the missions are present in limited duration and are intermittent as well. Therefore, it is not anticipated that marine mammal utilization of the waters in the study area will be affected, either temporarily

or permanently, as a result of mission activities.

Other factors related to PSW and AS gunnery mission activities that could potentially impact marine mammal habitat include the introduction of fuel, debris, ordnance, and chemical materials into the water column. The potential effects of each were analyzed in the PSW Environmental Assessment and EGTTR Programmatic Environmental Assessment and determined to be insignificant. For a complete discussion of potential effects on habitat, please refer to pages 4–1 to 4–7 in the 2005 EA and section 4 of the 2002 PEA.

Mitigation

In order to issue an Incidental Take Authorization under section 101(a)(5)(A) and (D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. The NDAA of 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that "the least practicable adverse impact" shall include consideration of personal safety, practicality of implementation, and the impact on the effectiveness of the "military readiness activity." Training activities involving PSWs and AS gunnery are considered military readiness activities.

Eglin AFB will require mission proponents to employ mitigation measures, which are discussed below, in an effort to decrease the number of marine mammals potentially affected. Mitigation measures primarily consist of visual observation of applicable areas of the ocean surface to detect the presence of marine mammals. Eglin AFB has also assessed missions to identify opportunities for operational mitigations (e.g., modifications to the mission that potentially result in decreased impacts to protected species) while potentially sacrificing some mission flexibility.

Mitigation for PSW Activities

Visual monitoring will be required during PSW missions from surface vessels and aircraft. Based on the particular ordnance involved in a given training event, Eglin AFB will survey the largest applicable ZOI for the presence of marine mammals on each day of testing. For example, the largest possible ZOI associated with the JASSM is 2,490 m (summer) or 3,250 m (winter), based on the 182 dB EFD Level B harassment threshold range for a detonation at depths greater than 20 m. For SDB detonations, the largest ZOI will be between 447 m and 594 m, depending on season and whether the detonation is a single or double SDB, based on the 23 psi range.

Prior to the mission, trained Air Force personnel aboard an aircraft will visually survey the ZOI for the presence of marine mammals. Trained observers aboard surface support vessels will provide additional monitoring for marine mammals and indicators of the presence of marine mammals (e.g., large schools of fish). Because of safety issues, observers will be required to leave the test area prior to the commencement of detonations; therefore, the ZOI will not be surveyed for approximately one hour before detonation. To account for this, an additional buffer zone equal to the radius of the largest threshold range will be monitored for marine mammals.

Fair weather that supports the ability to observe marine mammals is necessary to effectively implement monitoring. Wind, visibility, and surface conditions of the GOM are the most critical factors affecting mitigation implementation. Higher winds typically increase wave height and create "white cap" conditions, both of which limit an observer's ability to locate marine mammals at or near the surface. PSW missions will be delayed if the sea state is greater than a force 3 on the Beaufort scale (see Table 11–1 of the application) at the time of the activity. Such a delay will maximize detection of marine mammals. Visibility is also an important factor for flight safety issues. A minimum ceiling of 305 m and visibility of 5.6 km will be required to support mitigation and flight safety concerns.

Survey Team

A survey team will consist of a combination of Air Force, and civil service/civilian personnel. Aerial and surface vessel monitoring will be conducted during all PSW missions. A survey team leader will be designated for surface vessel observations and video monitoring. The team leader will be an Eglin AFB Natural Resources Section representative or designee. Marine mammal sightings and other applicable information will be communicated from surface vessel observers and the video controller to the team leader, who would then relay this information to the test director. Aircraft-to-surface vessel communications are not likely to be available; therefore, marine mammal sightings from the aerial team will be communicated directly to the test director. The test director will be responsible for the overall mission and for all final decisions, including possible delays or relocations due to marine mammal sightings. The test director will, however, consult with the survey team leader regarding all issues related to marine mammals before making final decisions.

The survey teams will have open lines of communication to facilitate real-time reporting of marine mammals and other relevant information, such as safety concerns. Direct communication between all personnel would be possible with the exception of aircraft-to-surface vessel communication, which will not be available. Survey results from the aircraft will be relayed to the test director, and results from the video feed and vessel surveys will be relayed to the team leader, who will coordinate with the test director. The team leader will also communicate recommendations to the test director.

Video Controller

Video monitoring will be conducted for some PSW missions. After consulting with the survey team leader, the test director will determine if video monitoring would be used to supplement monitoring from aircraft and vessels. If the decision is made to conduct video monitoring, PSW missions will be monitored from a land-based control center via live video feed. Under this scenario, video equipment will be placed on a barge or other appropriate platform located near the periphery of the test area. Video monitoring will, in addition to facilitating assessment of the mission, make remote viewing of the area for marine mammals possible. Although not part of the surface vessel survey team, the video controller will report any marine mammal sightings to the survey team leader. The entire ZOI may or may not be visible through the video feed, depending on the type of ordnance and specific location of the video equipment; therefore, video observation is considered supplemental to observation from aircraft and surface vessels.

Aerial Survey Team

Aircraft typically provide an excellent viewing platform for detection of marine mammals at or near the surface. The aerial survey team will consist of the aircrew (Air Force personnel) who will subsequently conduct the PSW mission. The pilot will be instructed on protected marine species survey techniques and would be familiar with marine species

expected to occur in the area. One person in the aircraft will act as a data recorder and will be responsible for relaying the location, species (if possible), direction of movement, and number of animals sighted to the test director. The aerial team would also identify large schools of fish (which could indicate the potential for marine mammals to be in the area), and large, active groups of birds (which could indicate the presence of a large school of fish). The pilot would fly the aircraft in such a manner that the entire ZOI and buffer zone would be observed. Aerial observers would be expected to have adequate sighting conditions within the weather limitations noted above. The PSW mission would occur no earlier than two hours after sunrise and no later than two hours prior to sunset to ensure adequate daylight for pre- and post-mission monitoring.

Surface Vessel Survey Team

Marine mammal monitoring would be conducted from one or more surface vessels concurrent with aerial surveys in order to increase mitigation effectiveness. Monitoring activities would be conducted from the highest point feasible on the vessel. Vessel-based observers would be familiar with the area's marine life and would be equipped with optical equipment with sufficient magnification to allow observation of surfaced marine mammals. If the entire ZOI cannot be adequately observed from a stationary point, the surface vessel(s) would conduct transects to provide sufficient coverage.

Mitigation Plan

The applicable ZOI and buffer zone would be monitored for the presence of marine mammals and marine mammal indicators. Implementation of PSW mitigation measures would be regulated by Air Force safety parameters. Although unexpected, any mission may be delayed or aborted due to technical issues. In the event of a technical delay, all mitigation procedures would continue until either the mission takes place or is canceled. To ensure the safety of vessel-based survey personnel, the team would depart from the test area approximately one hour before the live mission commences.

Pre-Mission Monitoring

The purposes of pre-mission monitoring are to: (1) Evaluate the test site for environmental conditions suitable for conducting the mission; and (2) verify that the ZOI and buffer zone are free of visually detectable marine mammals, as well as potential indicators of the presence of these animals including large schools of fish and flocks of birds. On the morning of the test mission, the test director and survey team leader would confirm that there are no issues that would preclude proceeding with the mission and that the weather is adequate to support monitoring and mitigation measures.

Approximately Five Hours Pre-Mission to Daybreak

The surface vessel survey team would be on site near the test target approximately five hours prior to launch (no later than daybreak). Observers on board at least one vessel, including the team leader, would assess the overall suitability of the test site based on environmental conditions (e.g., wind, visibility, and sea surface conditions) and visual observations of marine mammals or indicators (e.g., large schools of fish or large flocks of active birds on or near the water). This information would be relayed to the test director.

Two Hours Prior to Mission

Aerial and vessel-based surveys would begin two hours prior to launch. Aerial-based observers would evaluate the test site for environmental suitability in addition to surveying for protected marine species. The aerial team would monitor the test site, including but not limited to the ZOI and buffer zone, and would record and relay species sighting information to the test director. Surface vessel-based observers would also monitor the ZOI and buffer zone, and the team leader would record all marine mammal sightings, including the time of sighting and direction of travel, if known. In addition to the primary survey vessel, additional vessels may be used for conducting surveys. Surveys would continue for approximately one hour.

One Hour Prior to Mission

Approximately one hour prior to launch, surface vessel-based observers would be instructed to leave the test site and remain outside of the safety area (10 nm) for the duration of the mission. The survey team would continue to monitor for marine mammals from outside the safety zone. The team leader would continue to record sightings and bearings for all marine mammals detected. The monitoring activities conducted outside of the safety area would be supplemental to marine mammal monitoring for mitigation purposes due to the distance from the target. During this time, the aircraft crew would begin cold sweeps, which consist of clearing the range and confirming technical parameters, among other things. During cold sweeps, the aerial crew would continue to be able to monitor for marine mammals, although this will not be their primary task. Any marine mammal sightings during this time would be reported to the test director.

During the PSW Mission

Immediately prior to commencement of the live portion of the PSW mission, the survey team leader and test director would communicate to confirm the results of the marine mammal surveys and the appropriateness of proceeding with the mission. Although the test director, with input from the survey team leader, decides whether to, postpone, move, or cancel the mission, the mission would be postponed if:

(1) Any marine mammal is visually detected within the ZOI. The delay would continue until the marine mammal(s) that triggered the postponement is/are confirmed to be outside of the ZOI due to the animal(s) swimming out of range.

(2) Any marine mammal is visually detected in the buffer zone and subsequently cannot be reacquired. Under this scenario, the mission would not continue until (a) the last verified location is outside of the ZOI and the animal is moving away from the mission area, or (b) the animal is not re-sighted for at least 15 minutes.

(3) Large schools of fish are observed in the water within the ZOI, or large flocks of active birds (potential indicator of fish presence) are observed on or near the surface of the water. The delay would continue until these potential indicators are confirmed to be outside the ZOI.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. The aircraft crew would not be responsible for marine mammal monitoring once the live portion of the mission begins.

Post PSW Mission Monitoring

Post-mission monitoring is designed to determine the effectiveness of pre-mission monitoring by reporting sightings of any dead or injured marine mammals. Post-detonation monitoring via surface vessel-based observers would commence immediately following each detonation. The vessel(s) would move into the ZOI from outside the safety zone and continue monitoring for at least 30 minutes, concentrating on the area down-current from the test site. The monitoring team would document any marine mammals that were killed or injured as a result of the test and, if

practicable, coordinate with the regional marine mammal stranding response network to recover any dead animals for examination. The species, number, location, and behavior of any animals observed by the monitoring teams would be documented and reported to the team leader.

Mitigation Proposed for AS Gunnery Activities

Visual Monitoring

Areas to be used in AS gunnery missions would be visually monitored for marine mammal presence from the AC–130 aircraft prior to commencement of the mission. If the presence of one or more marine mammals is detected, the target area would be avoided. In addition, monitoring would continue during the mission. If marine mammals are detected at any time, the mission would halt immediately and relocate as necessary or be suspended until the marine mammal has left the area. Visual monitoring would be supplemented with infra-red (IR) and TV monitoring. As nighttime visual monitoring is generally considered to be ineffective at any height, the EGTTR missions will incorporate the TR.

Pre-Mission and Mission Monitoring

The AC–130 gunships travel to potential mission locations outside U.S. territorial waters (typically about 15 nm from shore) at an altitude of approximately 6,000 ft (1,829 m). The location of AS gunnery missions places these activities over shallower continental shelf waters where marine mammal densities are typically lower, and thus avoids the slope waters where more sensitive species (e.g., ESA-listed sperm whales) generally occur. After arriving at the target site, and prior to each firing event, the aircraft crew will conduct a visual survey of the 5-nm (9.3-km) wide prospective target area to attempt to sight any marine mammals that may be present (the crew will do the same for sea turtles and *Sargassum* rafts). The AC–130 gunship would conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 6,000 ft (1,829 m). Provided marine mammals (and other protected species) are not detected, the AC–130 would then continue orbiting the selected target point as it climbs to the mission testing altitude. The initial orbits occur over a timeframe of approximately 15 minutes. Monitoring for marine mammals, vessels, and other objects would continue throughout the mission. If a towed target is used, Air Force Special Operations Command would ensure that the target is moved in such a way that the largest impact threshold does not extend beyond the 5 nm cleared area. In other words, the tow pattern would be conducted so that the maximum harassment range of 282 m (Table 8) is always within the 5 nm cleared area.

During the low altitude orbits and the climb to testing altitude, the aircraft crew would visually scan the sea surface within the aircraft's orbit circle for the presence of marine mammals. Primary emphasis for the surface scan would be upon the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. During nighttime missions, crews would use night vision goggles during monitoring. The AC–130's optical and electronic sensors would also be employed for target clearance.

If any marine mammals are detected during pre-mission surveys or during the mission, activities would be immediately halted until the area is clear of all marine mammals for 60 minutes, or the mission would be relocated to another target area. If the mission is relocated, the survey procedures would be repeated at the new location. In addition, if multiple firing events occur within the same flight, these clearance procedures would precede each event.

Post-Mission Monitoring

Aircraft crews would conduct a post-mission survey beginning at the operational altitude of approximately 15,000 to 20,000 ft elevation and proceeding through a spiraling descent to approximately 6,000 ft. It is anticipated that the descent would occur over a 3- to 5-minute time period. During this time, aircrews would use the Infrared Detection Sets and low-light TV systems to scan the water surface for animals that may have been impacted during the gunnery exercise. During daytime missions, visual scans would be used as well.

Sea State Limitations

If daytime weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals and other marine life, AS gunnery exercises would be delayed until adequate sea conditions exist. Daytime live fire missions would be conducted only when sea surface conditions are sea state 4 or less on the Beufort scale (see Table 11–1 in the LOA application).

Operational Mitigation Measures

Eglin AFB has identified three operation mitigation measures for implementation during AS gunnery missions, including development of a training round, use of ramp-up procedures, and limitations on the number of missions conducted over the waters beyond the continental shelf. The largest type of ammunition used during typical gunnery missions is the 105-mm round containing 4.7 lbs of high explosive (HE). This is several times more HE then that found in the next largest round (40 mm). As a mitigation technique, the USAF developed a 105-mm TR that contains only 0.35 lb (0.16 kg) of HE. The TR was developed to dramatically reduce the risk of harassment at night and Eglin AFB anticipates a 96 percent reduction in impact by using the 105-mm TR (Table 11).

TABLE 11—EXAMPLE OF MITIGATION EFFECTIVENESS USING THE 105 MM TRAINING ROUND

Threshold (dB)	105 mm TR (~0.3 lbs HE)		105 mm FU (~4.7 lbs HE)		Mitigation Percent Reduction)	
	ZOI (km^2)	Affected animals (#)	ZOI (km^2)	Affected animals (#)	ZOI (%)	Affected animals (%)
160	6.8	40.9	179.2	1,078.8	96	96

The ramp-up procedure refers to the process of beginning an activity with the least impactive action and proceeding to subsequently more impactive actions. The rationale for requiring ramp-up procedures is that this process may allow animals to perceive steadily increasing noise levels and to react, if necessary, before the noise reaches a

threshold of significance. In the case of AS gunnery activities, ramp-up procedures involve beginning a mission with the lowest caliber munition and proceeding to the highest, which means the munitions would be fired in the order of 25 mm, 40 mm, and 105 mm.

The AC–130 gunship's weapons are used in two activity phases. First, the guns are checked for functionality and calibrated. This step requires an abbreviated period of live fire. After the guns are determined to be ready for use, the mission proceeds under various test and training scenarios. This second phase involves a more extended period of live fire and can incorporate use of one or any combination of the munitions available (25-, 40-, and 105-mm rounds).

The ramp-up procedure shall be required for the initial gun calibration, and, after this phase, the guns may be fired in any order. Eglin AFB and NMFS believe this process will allow marine species the opportunity to respond to increasing noise levels. If an animal leaves the area during ramp-up, it is unlikely to return while the live-fire mission is proceeding. This protocol allows a more realistic training experience. In combat situations, gunship crews would not likely fire the complete ammunition load of a given caliber gun before proceeding to another gun. Rather, a combination of guns would likely be used as required by an evolving situation. An additional benefit of this protocol is that mechanical or ammunition problems on an individual gun can be resolved while live fire continues with functioning weapons. This also diminishes the possibility of a lengthy pause in live fire, which, if greater than 10 min, would necessitate Eglin's re-initiation of protected species surveys.

Many marine mammal species found in the GOM, including the ESA-listed sperm whale, occur with greater regularity in waters over and beyond the continental shelf break. As a conservation measure to avoid impacts to sperm whales, Eglin AFB would conduct only one mission per year beyond the 200 m isobaths, which is considered to be the shelf break. This measure is expected to provide greater protection to several other marine mammal species as well. Eglin AFB has established a line delineating the shelf break, with coordinates of N 29° 42.73′ W 86° 48.27′ and N 29° 12.73′ W 85° 59.88′ (see Figure 1–12 in Eglin's LOA application). A maximum of only one mission per year would occur south of this line. The exposure analysis assumed that the single mission beyond the shelf break would occur during the day, so that 105 mm FU rounds would be used.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

For PSW and AS gunnery missions, prospective mission sites would be monitored for the presence of marine mammals prior to the commencement of activities. Monitoring would continue throughout gunnery missions and up to one hour prior to the launch of ordnance for PSW missions, and post-mission surveys would be conducted after all missions. Monitoring would be conducted using visual surveys from aircraft and, for PSW missions, surface vessels and aircraft using monitoring enhancement instruments (including the IDS and low-light TV systems). If marine mammals are detected during pre-mission monitoring for PSW missions (up to one hour prior to ordnance launch) activities would be immediately halted until the area is clear of all marine mammals. If marine mammals are detected during pre-mission monitoring for AS gunnery, activities would either be immediately halted until the area is clear of all marine mammals or the mission would be relocated to another area.

In addition to monitoring for marine mammals before, during, and after missions, the following monitoring and reported measures would be required:

(1) Aircrews would participate in the marine mammal species observation training. Each crew members would be required to complete the training prior to participating in a mission. Observers would receive training in protected species survey and identification techniques.

(2) Eglin AFB Natural Resources Section would track use of the EGTTR and protected species observations through the use of mission reporting forms.

(3) For AS gunnery missions, coordinate with next-day flight activities to provide supplemental post-mission observations for marine mammals in the operations area of the previous day.

(4) A summary annual report of marine mammal observations and mission activities would be submitted to the NMFS Southeast Regional Office (SERO) and the NMFS Office of Protected Resources. This annual report would include the following information: (i) Date and time of each exercise; (ii) a complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of mission activities on marine mammal populations; (iii) results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of missions and number of marine mammals (by species if possible) that may have been harassed due to presence within the activity zone; and (iv) for AS gunnery missions, a detailed assessment of the effectiveness of sensor-based monitoring in detecting marine mammals in the area of AS gunnery operations.

(5) If any dead or injured marine mammals are observed or detected prior to testing, or injured or killed during mission activities, a report would be made to NMFS by the following business day.

(6) Any unauthorized takes of marine mammals (i.e., mortality) would be immediately reported to NMFS and to the respective stranding network representative.

Adaptive Management

NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the U.S. Air Force regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the U.S. Air Force's monitoring from the previous year;

(2) Results from marine mammal and sound research; or

(3) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

Research

Although Eglin AFB does not currently conduct independent studies, Eglin's Natural Resources Section participates in marine mammal tagging

and monitoring programs lead by other agencies. In addition, the Natural Resources Section supports participation in annual surveys of marine mammals in the GOM with NMFS. From 1999 to 2002, Eglin AFB, through a contract representative, participated in summer cetacean monitoring and research efforts. The contractor participated in visual surveys in 1999 for cetaceans in the GOM, photo-identification of sperm whales in the northeastern Gulf in 2001, and as a visual observer during the 2000 Sperm Whale Pilot Study and the 2002 sperm whale Satellite-tag (S-tag) cruise. Eglin AFB's Natural Resources Section has also obtained funding from the Department of Defense for two marine mammal habitat modeling projects. One such project (Garrison, 2008) included funding for and extensive involvement of NMFS personnel to apply the most recent aerial survey data to habitat modeling and protected species density estimates in the northeastern GOM.

Based on this information, NMFS has determined that the PSW and AS gunnery mission activities will not have any impact on the food or feeding success of marine mammals in the northern GOM. Additionally, no loss or modification of the habitat used by cetaceans in the GOM is expected. Marine mammals are anticipated to temporarily vacate the area of live fire events. However, these events usually do not last more than 90 to 120 min at a time, and animals are anticipated to return to the activity area during periods of non-activity. Thus, the activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Negligible Impact Analysis and Determinations

The U.S. Air Force complied with the requirements of the previous LOAs and IHAs issued for PSW and AS gunnery activities, and reported zero observed takes of marine mammals incidental to these training exercises. For this final rulemaking, NMFS has determined that, based on the information provided in Eglin's application, the Final PEA and this document, the total taking of marine mammals by PSW and AS gunnery activities will have a negligible impact on the affected species or stocks over the 5-year period of take authorizations. No take by serious injury or mortality is anticipated during this period, and no take by serious injury or mortality is authorized.

Pursuant to our regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that we must perform to determine whether the activity will have a "negligible impact" on the species or stock. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated serious injuries and mortalities; (2) the number and nature of anticipated injuries (Level A harassment); (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

As mentioned previously, NMFS estimates that six species of marine mammals could be potentially affected by Level A or Level B harassment over the course of the five-year period. No take by serious injury or death is anticipated or authorized. By incorporating the required mitigation measures, including monitoring and shut-down procedures described previously, impacts to individual marine mammals from the proposed activities are expected to be limited to Level A (injury) or Level B (TTS and behavioral) harassment.

The USAF has described its specified activities based on best estimates of the number of hours that the USAF will conduct PSW and AS gunnery missions. The exact number of missions may vary from year to year, but will not exceed the annual totals indicated in Tables 1 and 2.

In addition, the potential for temporary or permanent hearing impairment and injury is low and through the incorporation of the required mitigation measures specified in this document would have the least practicable adverse impact on the affected species or stocks. The information contained in Eglin's EA, PEA, and incidental take application support NMFS' finding that impacts will be mitigated by implementation of a conservative safety range for marine mammal exclusion, incorporation of aerial and shipboard survey monitoring efforts in the program both prior to and after detonation of explosives, and delay/postponement/cancellation of detonations whenever marine mammals or other specified protected resources are either detected within the safety zone or may enter the safety zone at the time of detonation or if weather and sea conditions preclude adequate aerial surveillance. Since the taking would not result in more than the incidental harassment of certain species of marine mammals, will have only a negligible impact on these stocks, will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses (as there are no known subsistence uses of marine mammal stocks in the GOM), and, through implementation of required mitigation and monitoring measures, will result in the least practicable adverse impact on the affected marine mammal stocks, NMFS has determined that the requirements of section 101(a)(5)(A) of the MMPA have been met and this final rule can be issued.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). PSW operations would occur up to 24 times annually, at varying times within the year, and include eight "live shots." AS gunnery activities would occur up to 70 times per year. Therefore, Eglin AFB's PSW and AS gunnery operations will not be creating increased sound levels in the marine environment for prolonged periods of time, as operations are spaced throughout the year.

The proposed number of animals taken for each species can be considered small relative to the population size. Based on the best available information, NMFS proposes to authorize take, by Level B harassment only, of 2,200 bottlenose dolphin (444 annually), 1,765 Atlantic spotted dolphin (353 annually),

15 pantropical spotted dolphin (3 annually), 15 spinner dolphin (3 annually), 10 dwarf/pygmy sperm whale (2 annually), representing 4.9, 5.7, 0.02, 0.12, and 1.3 percent of the populations, respectively. However, this represents an overestimate of the number of individuals harassed over the duration of the regulations and LOA because these totals represent much smaller numbers of individuals that may harassed multiple times. In addition, NMFS proposes to authorize take, by Level A harassment, of 25 bottlenose dolphin (5 annually) and 20 Atlantic spotted dolphin (4 annually). No stocks known from the action area are listed as threatened or endangered under the ESA or otherwise considered depleted. Five bottlenose dolphin stocks designated as strategic under the MMPA may be affected by AS gunnery activities. In this case, under the MMPA, strategic stock means a marine mammal stock for which the level of direct human-caused mortality exceeds the potential biological removal level. These include Pensacola/East Bay, Choctawhatchee Bay, St. Andrew Bay, St. Joseph Bay, and St. Vincent Sound/Apalachicola Bay/St. George Sound stocks; however, large numbers of dolphins would not be affected because the missions generally occur more than 15 miles (24 km) from shore. No serious injury or mortality is anticipated, nor is the action likely to result in long-term impacts such as permanent abandonment or reduction in presence with the EGTTR. No impacts are expected at the population or stock level.

Endangered Species Act (ESA)

No ESA-listed marine mammals are known to occur within the action area. Therefore, there is no requirement for NMFS to consult under Section 7 of the ESA on the promulgation of regulations and issuance of the LOA under section 101(a)(5)(A) of the MMPA. However, ESA-listed sea turtles may be present within the action area. On October 20, 2004 and March 14, 2005, NMFS issued Biological Opinions (BiOps) on AS gunnery and PSW exercises in the EGTTR, respectively. The BiOps, which are still in effect, concluded that AS gunnery and PSW exercises are unlikely to jeopardize the continued existence of the endangered green turtle (*Chelonia mydas*), leatherback turtle (*Dermochelys coriacea*), Kemp's ridley turtle (*Lepidochelys kempii*), or threatened loggerhead turtle (*Caretta caretta*). No critical habitat has been designated for these species in the action area; therefore, none will be affected.

National Environmental Policy Act (NEPA)

AS Gunnery Missions

The USAF prepared a Final PEA in November 2002 for the AS gunnery activities within the EGTTR. NMFS made the USAF's 2002 Final PEA available upon request on January 23, 2006 (71 FR 3474). In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS reviewed the information contained in the USAF's 2002 Final PEA, and determined that the document accurately and completely described the proposed action, the alternatives to the proposed action, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted the USAF's 2002 Final PEA and made its own FONSI on May 16, 2006. In the course of adopting the USAF's 2002 Final PEA and reaching a FONSI, NMFS took into consideration updated data and information contained in its **Federal Register** document noting issuance of an IHA to Eglin AFB for this activity (71 FR 27695, May 12, 2006), and previous notices (71 FR 3474, January 23, 2006; 70 FR 48675, August 19, 2005), and determined that the proposed action had not changed substantially or presented new circumstances or environmental concerns such that supplemental NEPA analysis was necessary.

The issuance of the 2008 IHA to Eglin AFB amended three of the mitigation measures for reasons of practicality and safety, therefore, NMFS reviewed the USAF's 2002 Final PEA and determined that a new EA was warranted to address: (1) the proposed modifications to the mitigation and monitoring measures; (2) the use of 23 psi as a change in the criterion for estimating potential impacts on marine mammals from explosives; and (3) a cumulative effects analysis of potential environmental impacts from all GOM activities (including Eglin mission activities), which was not addressed in the USAF's 2002 Final PEA. Therefore, NMFS prepared a new EA in December 2008 and issued a FONSI for its action on December 9, 2008. NMFS has reviewed the environmental impacts on the human environment presented by this rulemaking and LOA to Eglin AFB and found that they are not substantially different from the action analyzed in Eglin's EA. No new incremental change would occur under this new authority. NMFS has determined that Eglin AFB's action has not changed substantially and that no significant new circumstances or environmental concerns bearing on the proposed action or its impacts exist. As the environmental impacts for this action fall within the scope of the NMFS 2008 EA, NMFS presently does not intend to issue a new EA, a supplemental EA, or an environmental impact statement for the issuance of a LOA to Eglin AFB to take marine mammals incidental to this activity. NMFS reviewed all comments submitted by the public in response to the proposed rule before making a final determination on the need to supplement the 2008 EA and whether to reaffirm the FONSI.

PSW Missions

In December 2003, Eglin AFB released a Draft PEA on PSW activities within the EGTTR. On April 22, 2004 (69 FR 21816), NMFS noted that Eglin AFB had prepared a Draft PEA for PSW activities and made this PEA available upon request. Eglin AFB updated the information in that PEA and issued a Final PEA and a Finding of No Significant Impact (FONSI) on the PSW activities. NMFS reviewed the information contained in Eglin AFB's Final PEA and determined that the PEA accurately and completely describes the preferred action alternative, a reasonable range of alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred and non-preferred alternatives. Based on this review and analysis, NMFS adopted Eglin AFB's PEA on July 25, 2005, and issued our own FONSI statement. The impacts on the human environment by issuance of this rulemaking and LOA to Eglin AFB are not substantially different from the action analyzed in Eglin's PEA as no new incremental change would occur under this new authority. NMFS has therefore determined that Eglin AFB's action has not changed substantially and that no significant new circumstances or environmental concerns bearing on the proposed action or its impacts exist. As the environmental impacts for this action fall within the scope of the Eglin AFB PEA, NMFS has determined that it is not necessary to issue a new EA or supplemental EA, for promulgation of this rule and issuance of a LOA to Eglin AFB to take marine mammals incidental to this activity. NMFS reviewed all comments submitted by the public in response to the proposed rule before making a final determination on the need to prepare a separate EA or

supplement the Eglin AFB PEA and make an independent FONSI.

Having reviewed the information in past **Federal Register** notices issuing IHAs and regulations for the proposed activities, public comments submitted in response to them, as well as the series of EAs discussed above, NMFS does not anticipate that a comprehensive authorization for the incidental take of marine mammals for both PWS and AS gunnery exercises is likely to result in new or significant cumulative impacts. We will consider comments submitted by the public on this issue.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if issued, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this final rule. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of the measures contained in this final rule. Eglin AFB is the only entity subject to the regulations and it has informed NMFS of its request that the final rule take effect upon publication in the **Federal Register**. Any delay of enacting the final rule would result in either: (1) A suspension of planned training activities, which would disrupt vital training essential to national security; or (2) Eglin AFB's procedural non-compliance with the MMPA (should Eglin AFB conduct training without an LOA), thereby resulting in the potential for unauthorized take of marine mammals. Moreover, Eglin AFB is ready to implement the rule immediately. For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay in the effective date.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: March 5, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart L is added to part 217 to read as follows:

Subpart L—Taking Marine Mammals Incidental to Conducting Precision Strike Weapon and Air-to-Surface Gunnery Missions at Eglin Gulf Test and Training Range (EGTTR) in the Gulf of Mexico

Sec.

Subpart L—Taking Marine Mammals Incidental to Conducting Precision Strike Weapon and Air-to-Surface Gunnery Missions at Eglin Gulf Test and Training Range (EGTTR) in the Gulf of Mexico

§ 217.110 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Air Force for the incidental taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Air Force is only authorized if it occurs within the Eglin Air Force Base Gulf Test and Training Range (as depicted in Figure 1–9 of the Air Force's Request for a Letter of Authorization). The EGTTR is the airspace over the Gulf of Mexico beyond 3 nm from shore that is controlled by Eglin Air Force Base. The specified activities will take place within the boundaries of Warning Area W–151. The inshore and offshore boundaries of W–151 are roughly parallel to the shoreline contour. The shoreward boundary is 3 nm from shore, while the seaward boundary extends approximately 85 to 100 nm offshore, depending on the specific location. W–151 has a surface area of approximately 10,247 nm^2 (35,145 km^2), and includes water depths ranging from approximately 20 to 700 m.

(c) The taking of marine mammals by the Air Force is only authorized of it occurs incidental to the following activities within the designated amounts of use:

(1) The use of the following Precision Strike Weapons (PSWs) for PSW training activities, in the amounts indicated below:

(i) Joint Air-to-Surface Stand-Off Missile (JASSM) AGM–158 A and B—two live shots (single) and 4 inert shots (single) per year;

(ii) Small-diameter bomb (SDB) GBU–39/B—six live shots per year, with two of the shots occurring simultaneously, and 12 inert shots per year, with up to two occurring simultaneously.

(2) The use of the following ordnance for daytime Air-to-Surface (AS) Gunnery training activities, in the amounts indicated below:

(i) 105 mm HE Full Up (FU)—25 missions per year with 30 rounds per mission;

(ii) 40 mm HE—25 missions per year with 64 rounds per mission;

(iii) 25 mm HE—25 mission per year with 560 rounds per mission.

(3) The use of the following ordnance for nighttime Air-to-Surface (AS) Gunnery training activities, in the amounts indicated below:

(i) 105 mm HE Training Round (TR)—45 missions per year with 30 rounds per mission;

(ii) 40 mm HE—45 missions per year with 64 rounds per mission;

(iii) 25 mm HE—45 mission per year with 560 rounds per mission.

§ 217.111 Effective dates.

Regulations in this subpart are effective March 11, 2014 and applicable to Eglin AFB March 5, 2014, through March 4, 2019.

§ 217.112 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to §§ 216.106 and 217.117 of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment within the area described in § 217.110(b) of this chapter, provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 217.110(c) of this chapter must be

conducted in a manner that minimizes, to the greatest extent practicable, any adverse impact on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 217.110(c) is limited to the following species, by the indicated method of take and the indicated number:

(1) Level B Harassment:

(i) Atlantic bottlenose dolphin (*Tursiops truncatus*)—2,200 (an average of 444 annually);

(ii) Atlantic spotted dolphin (*Stenella frontalis*)—1,765 (an average of 353 annually);

(iii) Pantropical spotted dolphin (*S. attenuate*)—15 (an average of 3 annually);

(iv) Spinner dolphin (*S. longirostris*)—15 (an average of 3 annually);

(v) Dwarf or pygmy sperm whale (*Kogia simus or Kogia breviceps*)—10 (an average of 2 annually).

(2) Level A Harassment:

(i) Atlantic bottlenose dolphin (*Tursiops truncatus*)—25 (an average of 5 annually);

(ii) Atlantic spotted dolphin (*Stenella frontalis*)—20 (an average of 4 annually).

§ 217.113 Prohibitions.

No person in connection with the activities described in § 217.110 shall:

(a) Take any marine mammal not specified in § 217.112(c);

(b) Take any marine mammal specified in § 217.112(c) other than by incidental take as specified in § 217.112(c)(1) and (c)(2);

(c) Take a marine mammal specified in § 217.112(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 217.117 of this chapter.

§ 217.114 Mitigation.

(a) The activities identified in § 217.110(c) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 217.110(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 217.117 of this chapter must be implemented.

(b) Precision Strike Weapon Missions:

(1) Safety Zones;

(i) For the JASSM, the Air Force must establish and monitor a safety zone for marine mammals with a radius of 2.0 nm (3.7 km) from the center of the detonation and a buffer zone with a radius of 1.0 nm (1.85 km) radius from the outer edge of the safety zone.,

(ii) For the SDB, the holder of the Letter of Authorization must establish and monitor a safety zone for marine mammals with a radius of no less than 5 nm (9.3 km) for single bombs and 10 nm (18.5 km) for double bombs and a buffer zone from the outer edge of the safety zone with a radius of at least 2.5 nm (4.6 km) for single bombs and 5 nm (18.5 km) for double bombs.

(2) For PSW missions, the holder of the Letter of Authorization must comply with the monitoring requirements, including pre-mission monitoring, set forth in § 217.115(c).

(3) When detonating explosives:

(i) If any marine mammals or sea turtles are observed within the designated safety zone or the buffer zone prescribed in the condition in paragraph (b)(1) of this section or that are on a course that will put them within the safety zone prior to JASSM or SDB launch, the launching must be delayed until all marine mammals are no longer within the designated safety zone.

(ii) If any marine mammals are detected in the buffer zone and subsequently cannot be reacquired, the mission launch will not continue until the next verified location is outside of the safety zone and the animal is moving away from the mission area.

(iii) If large Sargassum rafts or large concentrations of jellyfish are observed within the safety zone, the mission launch will not continue until the Sargassum rafts or jellyfish that caused the postponement are confirmed to be outside of the safety zone due to the current and/or wind moving them out of the mission area.

(iv) If weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals or sea turtles, detonation must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken. Adequate sea conditions means the sea state does not exceed Beaufort sea state 3.5 (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), the visibility is 5.6 km (3 nm) or greater, and the ceiling is 305 m (1,000 ft) or greater.

(v) To ensure adequate daylight for pre- and post-detonation monitoring, mission launches may not take place earlier than 2 hours after sunrise, and detonations may not take place later than 2 hours prior to sunset, or whenever darkness or weather conditions will preclude completion of the post-test survey effort described in § 217.115.

(vi) If post-detonation surveys determine that a serious injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with the National Marine Fisheries Service and appropriate changes to avoid unauthorized take must be made prior to conducting the next mission detonation.

(vii) Mission launches must be delayed if aerial or vessel monitoring programs described under § 217.115 cannot be fully carried out.

(c) Air-to-Surface Gunnery Missions:

(1) Sea State Restrictions:

(i) If daytime weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals and other marine life, air-to-surface gunnery exercises must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken. Daytime air-to-surface gunnery exercises will be conducted only when sea surface conditions do not exceed Beaufort sea state 4 (i.e., wind speed 13–18 mph (11–16 knots); wave height 1 m (3.3 ft)), the visibility is 5.6 km (3 nm) or greater, and the ceiling is 305 m (1,000 ft) or greater.

(ii) [Reserved]

(2) Pre-mission and Mission Monitoring:

(i) The aircrews of the air-to-surface gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (> 12 nm).

(ii) Prior to each firing event, the aircraft crew will conduct a visual and/or instrument survey of the 5-nm (9.3-km) wide prospective target area to locate any marine mammals that may be present.

(A) The AC–130 gunship will conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at an altitude of approximately 6,000 ft (1,829 m).

(B) If marine mammals are not detected, the AC–130 can then continue orbiting the selected target point as it climbs to the mission testing altitude.

(C) During the low altitude orbits and the climb to testing altitude, aircraft crew will scan the sea surface within the aircraft's orbit circle for the presence of marine mammals.

(D) The AC–130's optical and electronic sensors must be employed for target detection, especially at night when visibility will be poor.

(E) If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the

mission will be immediately halted and relocated as necessary or suspended until the marine mammal has left the area. If relocated to another target area, the clearance procedures described in paragraph (c)(2)(ii) of this section must be repeated.

(F) If multiple firing events occur within the same flight, these clearance procedures must precede each event.

(iii) If no marine mammals are detected, gunnery exercises may begin with the deployment of MK–25 flares into the center of the designated 5-nm target area.

(3) Operational Mitigation Measures:

(i) Ramp-up air-to-surface gunnery firing activities by beginning with the lowest caliber monition and proceeding to the highest, which means the munitions would be fired in the following order: 25 mm; 40 mm; and 105 mm.

(ii) Air-to-surface gunnery exercises conducted after sunset must use the 105-mm training round instead of the 105-mm full up round.

(iii) One mission per year may be conducted beyond the 200 m isobaths, which is south of a line delineating the shelf break with coordinates of 29°42.73′ N, 86°48.27′ W and 29°12.73′ N, 85°59.88′ W (Figure 1–12 in Eglin AFB's LOA application). The single mission beyond the shelf break will occur during daylight hours only.

(4) Post-mission Monitoring:

(i) Aircrews will initiate the post-mission clearance procedures beginning at the operational altitude of approximately 15,000 to 20,000 ft (4572 to 6096 m) elevation, and then initiate a spiraling descent down to an observation altitude of approximately 6,000 ft (1,829 m) elevation. Rates of descent will occur over a 3- to 5-minute time frame.

(ii) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with the National Marine Fisheries Service and appropriate changes to avoid unauthorized take must be made, prior to conducting the next air-to-surface gunnery exercise.

§ 217.115 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 217.117 of this chapter for activities described in § 217.110(c) is required to conduct the monitoring and reporting measures specified in this section and § 217.114 and any additional monitoring measures contained in the Letter of Authorization.

(b) The Holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by letter or telephone (301–427–8401), at least 2 weeks prior to any modification to the activity identified in § 217.110(c) that has the potential to result in the serious injury, mortality or Level A or Level B harassment of a marine mammal that was not identified and addressed previously.

(c) Monitoring Procedures for PSW Missions:

(1) The Holder of this Authorization must:

(i) Designate qualified on-site individual(s) to record the effects of mission launches on marine mammals that inhabit the northern Gulf of Mexico;

(ii) Have on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in this subpart and in the Letter of Authorization issued pursuant to §§ 216.106 and 217.117 of this chapter.

(iii) Conduct aerial surveys to reduce impacts on protected species. The aerial survey/monitoring team will consist of two experienced marine mammal observers, approved in advance by the Southeast Region, National Marine Fisheries Service. The aircraft will also have a data recorder who would be responsible for relaying the location, the species if possible, the direction of movement, and the number of animals sighted.

(iv) Conduct shipboard monitoring to reduce impacts to protected species. Trained observers will conduct monitoring from the highest point possible on each mission or support vessel(s). The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25x power "Big-Eye" binoculars).

(2) The aerial and shipboard monitoring teams will maintain proper lines of communication to avoid communication deficiencies. The observers from the aerial team and operations vessel will have direct communication with the lead scientist aboard the operations vessel.

(3) Pre-mission Monitoring: Approximately 5 hours prior to the mission, or at daybreak, the appropriate vessel(s) would be on-site in the primary test site near the location of the earliest planned mission point. Observers onboard the vessel will assess the suitability of the test site, based on visual observation of marine mammals and sea turtles, the presence of large Sargassum mats, seabirds and jellyfish aggregations and overall environmental conditions (visibility, sea state, etc.). This information will be relayed to the lead scientist.

(4) Three Hours Prior to Mission:

(i) Approximately three hours prior to the mission launch, aerial monitoring will commence within the test site to evaluate the test site for environmental suitability. Evaluation of the entire test site would take approximately 1 to 1.5 hours. The aerial monitoring team will begin monitoring the safety zone and buffer zone around the target area.

(ii) Shipboard observers will monitor the safety and buffer zone, and the lead scientist will enter all marine mammals and sea turtle sightings, including the time of sighting and the direction of travel, into a marine animal tracking and sighting database.

(5) One to 1.5 Hours Prior to Mission Launch:

(i) Depending upon the mission, aerial and shipboard viewers will be instructed to leave the area and remain outside the safety area. The aerial team will report all marine animals spotted and their directions of travel to the lead scientist onboard the vessel.

(ii) The shipboard monitoring team will continue searching the buffer zone for protected species as it leaves the safety zone. The surface vessels will continue to monitor from outside of the safety area until after impact.

(6) Post-mission monitoring:

(i) The vessels will move into the safety zone from outside the safety zone and continue monitoring for at least two hours, concentrating on the area down current of the test site.

(ii) The holder of the Letter of Authorization will closely coordinate mission launches with marine animal stranding networks.

(iii) The monitoring team will document any dead or injured marine mammals or turtles and, if practicable, recover and examine any dead animals.

(d) Monitoring Procedures for A–S Gunnery Missions:

(1) In addition to the monitoring requirements in 217.114(c), the holder of the Letter of Authorization must:

(i) Cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(ii) Require aircrews to initiate the post-mission clearance procedures

beginning at the operational altitude of approximately 15,000 to 20,000 ft (4572 to 6096 m) elevation, and then initiate a spiraling descent down to an observation altitude of approximately 6,000 ft (1,829 m) elevation. Rates of descent will occur over a 3- to 5-minute time frame.

(iii) Track their use of the EGTTR for test firing missions and marine mammal observations, through the use of mission reporting forms.

(iv) Coordinate air-to-surface gunnery exercises with future flight activities to provide supplemental post-mission observations of marine mammals in the operations area of the exercise.

(2) [Reserved]

(e) In accordance with provisions in § 217.118(b)(2), the Holder of the Letter of Authorization must conduct the research required under the Letter of Authorization.

(f) Reporting:

(1) Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must conduct all of the monitoring and reporting required under the LOA and submit an annual report to the Director, Office of Protected Resources, National Marine Fisheries Service by a date certain specified in the LOA. This report must include the following information:

(i) Date and time of each PSW/air-to-surface gunnery exercise;

(ii) A complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of PSW/air-to-surface gunnery exercises on marine mammal populations;

(iii) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the training exercises and number of marine mammals (by species if possible) that may have been harassed due to presence within the applicable safety zone;

(iv) A detailed assessment of the effectiveness of sensor-based monitoring in detecting marine mammals in the area of air-to-surface gunnery operations; and

(v) Results of coordination with coastal marine mammal stranding networks.

(2) The final comprehensive report on all marine mammal monitoring and research conducted during the applicability period of this subpart must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of applicability of this subpart or 240 days after the expiration of applicability of this subpart if new regulations will not be requested.

§ 217.116 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to this subpart, the U.S. citizen (as defined at § 216.103 of this chapter) conducting the activities identified in § 217.110(c) must apply for and obtain either an initial Letter of Authorization in accordance with §§ 216.106 and 217.117 of this chapter or a renewal under § 217.118.

§ 217.117 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammals.

§ 217.118 Renewals and Modifications of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 217.117 of this chapter for the activities identified in § 217.110(c) will be renewed or modified upon request of the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart (excluding changes made pursuant to adaptive management) and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous Letter of Authorization under this subpart were implemented.

(b) For Letter of Authorization modifications or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to adaptive management) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of a proposed Letter of Authorization in the **Federal Register**, including the associate analysis illustrating the change, and solicit public comment before issuing the Letter of Authorization.

(c) A Letter of Authorization issued under §§ 216.106 and 217.117 of this chapter for the activity identified in § 217.110(c) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify or augment the existing mitigation or monitoring measures (after consulting with the U.S. Air Force regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(i) Results from the U.S. Air Force's monitoring from the previous year;

(ii) Results from marine mammal and sound research; or

(iii) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by this subpart or subsequent Letters of Authorization.

(2) Emergencies. If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.112(c), a Letter of Authorization issued pursuant to §§ 216.106 and 217.117 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. 2014–05264 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 47
Tuesday, March 11, 2014

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0128; Directorate Identifier 2013–NM–133–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

Correction

In proposed rule document 2014–04568, appearing on pages 11725 through 11728 in the issue of Monday, March 3, 2014, make the following correction:

On page 11725, in the third column, in the third line of the **SUMMARY**, "Boeing Company Model airplanes" should read "Boeing Company Model 777 airplanes".

[FR Doc. C1–2014–04568 Filed 3–10–14; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135, and 142

[AC 120–UPRT and AC 120–109A]

Advisory Circular for Upset Prevention and Recovery Training and Advisory Circular for Stall Prevention and Recovery Training

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

ACTION: Notice of availability of proposed Advisory Circular for Upset Prevention and Recovery Training and proposed revision to Advisory Circular for Stall Prevention and Recovery Training, request for comment.

SUMMARY: The Federal Aviation Administration (FAA) is announcing the availability of proposed Advisory Circulars (AC) 120–UPRT and 120–109A. AC 120–UPRT provides recommended practices and guidance for academic and flight simulation training device (FSTD) training for pilots to prevent developing upset conditions and ensure correct and consistent recovery responses to upsets. AC 120–109A provides guidance and best practices for training, testing, and checking for pilots to ensure correct responses to impending and full stalls.

DATES: Written comments must be received on or before May 12, 2014.

ADDRESSES: Send comments identified by AC 120–UPRT or AC 120–109A using any of the following methods:

- *Aviation Safety Draft Document Open for Comment Web site:* Go to *http://www.faa.gov/aircraft/draft_docs/afs_ac/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to 1625 K Street NW., Suite 300, Washington, DC 20006.
- *Fax:* Fax comments to 202–223–4615. Attn: Susan Hill.
- *Hand Delivery:* Bring comments to the 1625 K Street NW., Suite 300, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robyn LaPorte, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8166; facsimile: 202–267–5229; email: *robyn.laporte@faa.gov.*

Background

These draft ACs provide guidance regarding the new training requirements contained in the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers final rule published November 12, 2013 (FAA Docket FAA–2008–0677).

Advisory Circular 120–UPRT

The primary goal of this proposed AC is to provide recommended practices and guidance for academic and flight simulation training device (FSTD) training for pilots to prevent developing upset conditions and ensure correct and consistent recovery responses to upsets. This AC was developed based on a review of recommended practices developed by major airplane manufacturers, labor organizations, air carriers, training organizations, simulator manufacturers, and industry representative organizations. This AC provides guidance to Title 14 Code of Federal Regulations (14 CFR) part 121 air carriers implementing the regulatory requirements of §§ 121.419, 121.423, 121.424, and 121.427. Core principles of this AC include:

- Enhanced instructor training on the limitations of simulation.
- Comprehensive pilot academic training on aerodynamics.
- Early recognition of divergence from intended flight path.
- Upset prevention through improvements in manual handling skills.
- Progressive intervention strategies for the pilot monitoring.

Advisory Circular 120–109A

The primary goal of this proposed AC revision is to provide guidance and best practices for training, testing, and checking for pilots to ensure correct responses to impending and full stalls. This AC was developed based on a review of recommended practices developed by major airplane manufacturers, labor organizations, air carriers, training organizations, simulator manufacturers, and industry representative organizations. Core principles of this Advisory Circular include:

- Reducing angle of attack is the most important pilot action in an impending or full stall.
- Pilot training should emphasize teaching the same recovery technique for impending stalls and full stalls.
- Evaluation criteria for a recovery from an impending stall should not include a predetermined value for altitude loss. Instead, criteria should consider the multitude of external and internal variables which affect the recovery altitude.
- Once the stall recovery procedure is mastered by maneuver-based training, stall prevention training should include realistic scenarios that could be encountered in operational conditions, including impending stalls with the autopilot engaged and at high altitudes.
- Full stall training should be led by the instructor, but must allow the pilot to experience the associated flight dynamics and execute a recovery.

The agency will consider all comments received by May 12, 2014. Comments received after that date may be considered if consideration will not

delay agency action on the review. A copy of the advisory circulars is available for review at *http://www.faa.gov/aircraft/draft_docs/afs_ac/.*

Issued in Washington, DC on March 5, 2014.

John S. Duncan,

Deputy Director, Flight Standards Service.

[FR Doc. 2014–05287 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 112

[Docket No. FDA–2011–N–0921]

RIN 0910–AG35

Environmental Impact Statement for the Proposed Rule, Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption; Public Meeting on Scoping of Environmental Impact Statement and Extension of Comment Period for Environmental Impact Statement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public scoping meeting; extension of comment period for the Environmental Impact Statement.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the extension of the public scoping period for Environmental Impact Statement (EIS), as well as a public scoping meeting to discuss the scope of the EIS for the proposed rule to establish standards for growing, harvesting, packing, and holding of produce for human consumption. FDA is holding a public scoping meeting as part of our ongoing efforts to seek public input on the issues and alternatives that we should consider when preparing the EIS and to provide information about the EIS process (including how to submit comments, data, and other information to the rulemaking docket), to solicit oral stakeholder and public comments on the scope of the EIS, and to respond to questions about the EIS.

DATES: See section II, "How to Participate in the Public Meeting" in the **SUPPLEMENTARY INFORMATION** section of this document for date and time of the public meeting, closing dates for advance registration, and information on deadlines for submitting either electronic or written comments to FDA's Division of Dockets Management.

Comments on the scope of issues the Agency should include in the EIS may be submitted until April 18, 2014.

ADDRESSES: See section II, "How to Participate in the Public Meeting" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments on the scope of issues the Agency should include in the EIS, identified by Docket No. FDA–2011–N–0921 and/or Regulatory Information Number (RIN) 0910–AG35, by any of the following methods:

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 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–2011–N–0921, and RIN 0910–AG35 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 "Request for Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, 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: *For questions about registering for the meeting, to register by phone, or to submit a notice of participation by mail, FAX or email:* Rick Williams, c/o FDA EIS, 72 Loveton Circle, Sparks, MD 21152, 410–316–2377; FAX: 410–472–3289, email: *RWilliams@jmt.com.*

For general questions about the meeting, to request an opportunity to make an oral presentation at the public meeting, to submit the full text, comprehensive outline, or summary of an oral presentation, or for special accommodations due to a disability: Cynthia Wise, Center for Food Safety and Applied Nutrition (HFS–009), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1357, email: *cynthia.wise@fda.hhs.gov.*

For further information about comments for the docket: Annette McCarthy, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353), signed into law by President Obama on January 4, 2011, enables FDA to better protect public health by helping to ensure the safety and security of the food supply. FSMA amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to establish the foundation of a modernized, prevention-based food safety system. As part of our implementation of FSMA, we published the Proposed Rule, Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (hereafter referred to as "the Produce Safety proposed rule") to establish science-based minimum standards for the safe growing, harvesting, packing, and holding of produce (78 FR 3503, January 16, 2013). We recently announced plans to propose revised rule language for key parts of the Produce Safety proposed rule, including those related to water quality and the use of raw manure and compost (Ref. 1).

In publishing the Produce Safety proposed rule, we relied on a categorical exclusion from the need to prepare an Environmental Assessment or EIS under 21 CFR 25.30(j) (78 FR 3503 at 3616). However, on August 19, 2013, we issued a Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Rule, Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (NOI), based on additional information, including comments received, and upon further analysis. In the NOI, we explained that FDA has determined that the proposed action may significantly affect the quality of the human environment (21 CFR 25.22(b)), and therefore, an EIS is necessary for the final rule (78 FR 50358, August 19, 2013). In the NOI, FDA also announced the beginning of the scoping process and solicited public comments to identify issues to be analyzed in an EIS. The NOI asked for public comment by

November 15, 2013, and FDA later extended the deadline for the public scoping period to March 15, 2014 (78 FR 69006, November 18, 2013). FDA is again extending the public scoping period to allow FDA to hold an upcoming public scoping meeting.

In this **Federal Register** notice, we are addressing the scope of issues for discussion at the public scoping meeting for the purpose of assisting us in determining which issues are significant and will be analyzed in depth in the EIS (see 40 CFR 1501.7). Based on a preliminary review of comments, currently available information, and our analysis of the proposed provisions, we summarize in this document those provisions of the Produce Safety proposed rule that may significantly affect the quality of the human environment, which provisions we would include for detailed study in the EIS. In addition, as required under the National Environmental Policy Act (NEPA) and its implementing regulations, we also identify a range of potential alternatives for each issue that we plan to consider in the EIS. These are set out in table 1. We note that this EIS process is required under NEPA and is distinct from and in addition to the process FDA has announced to revise parts of the propose rule and seek comment on the revisions.

1. Microbial Standard for Agricultural Water Used During Growing Activities for Covered Produce (Other Than Sprouts) Using a Direct Water Application Method

Proposed § 112.44(c) states, "When agricultural water is used during growing activities for covered produce (other than sprouts) using a direct water application method you must test the quality of water in accordance with one of the appropriate analytical methods in subpart N. If you find that there is more than 235 colony forming units (CFU) (or most probable number (MPN), as appropriate) generic *Escherichia coli* per 100 mL for any single sample or a rolling geometric mean (n=5) of more than 126 CFU (or MPN, as appropriate) per 100 mL of water, you must immediately discontinue use of that source of agricultural water and/or its distribution system for the uses described in this paragraph. Before you may use the water source and/or distribution system again for the uses described in this paragraph, you must either re-inspect the entire agricultural water system under your control, identify any conditions that are reasonably likely to introduce known or reasonably foreseeable hazards into or onto covered produce or food-contact surfaces, make necessary changes, and retest the water to determine if your changes were effective; or treat the water in accordance with the requirements of § 112.43." (Proposed § 112.3(c) defines "direct water application method" as using agricultural water in a manner whereby the water is intended to, or is likely to, contact covered produce or food-contact surfaces during use of the water.) In addition, proposed § 112.43 includes requirements for treating agricultural water.

As noted in the NOI, public comments state that, in some regions, current irrigation practices use water that is unlikely to meet the proposed microbial standards for much, if not all, of the growing season. Consequently, if such standards are finalized, ground water is likely to be explored as a viable alternative water source for irrigation in these regions. Given recently highlighted concerns of ground water depletion in certain regions, FDA has determined that an increased use of ground water for irrigation, in response to the microbial standard in § 112.44(c), may significantly affect the quality of the human environment in those regions (78 FR 50358 at 50359).

In addition, our proposed requirements for treatment of water in § 112.43, in the context of the microbial standard, may result in changes in current practices that may significantly affect the quality of the human environment (for example, if treated tail waters are not contained or if treated effluent is not properly discharged). Therefore, we plan to consider the possible environmental impacts in the EIS resulting from these proposed provisions in addition to the environmental impacts from a range of potential alternatives to the water quality microbial standard proposed in § 112.44(c).

2. Minimum Application Intervals for Biological Soil Amendments of Animal Origin

Proposed § 112.56 states, in part, "If the biological soil amendment of animal origin is untreated, then the biological soil amendment of animal origin must be applied in a manner that does not contact covered produce during application and minimizes the potential for contact with covered produce after application, and then the minimum application interval is 9 months" (proposed § 112.56(a)(1)(i)); and "if the biological soil amendment of animal origin is treated by a composting process in accordance with the requirements of § 112.54(c) to meet the microbial standard in § 112.55(b), then the biological soil amendment of animal origin must be applied in a manner that minimizes the potential for contact with covered produce during and after application, and then the minimum application interval is 45 days" (proposed § 112.56(a)(4)(i)). Proposed § 112.54 includes provisions for acceptable treatment processes for biological soil amendments of animal origin.

Several comments received thus far have urged FDA to reevaluate the application restrictions for biological soil amendments of animal origin, which are based on the likelihood of the soil amendment harboring pathogens. As noted in the NOI, these proposed requirements, if finalized, are expected to result in changes in current use of treated and untreated biological soil amendments of animal origin or potentially greater use of synthetic fertilizers (78 FR 50358 at 50359). Changes in the type or handling of soil amendments, in response to the minimum application intervals, may significantly affect the quality of the human environment. Therefore, we plan to consider the possible environmental impacts in the EIS resulting from these proposed provisions in addition to the environmental impacts from a range of potential alternatives to the minimum application intervals proposed in § 112.56(a)(1)(i) and (a)(4)(i).

3. Measures Related to Animal Grazing and Animal Intrusion

Proposed § 112.82 states, in part, "At a minimum, if you allow animals to graze or use them as working animals in fields where covered produce is grown, and under the circumstances there is a reasonable probability that grazing or working animals will contaminate covered produce, you must take the following measures: (a) An adequate waiting period between grazing and harvesting for covered produce in any growing area that was grazed to ensure the safety of the harvested crop."

Proposed § 112.83(b) states, "If animal intrusion, as made evident by observation of significant quantities of animals, animal excreta or crop destruction via grazing, occurs, you must evaluate whether the covered produce can be harvested in accordance with the requirements of § 112.112." Further, proposed § 112.112 states: "You must take all measures reasonably necessary to identify, and not harvest, covered produce that is reasonably likely to be contaminated with a known or reasonably foreseeable hazard, including steps to identify and not harvest covered produce that is visibly contaminated with animal excreta."

We have received comments stating that these proposed requirements could potentially result in changes in current practices that would not be consistent with wildlife conservation practices and, thus, may adversely affect wildlife, including endangered and threatened species. Therefore, we plan to consider the possible environmental impacts in the EIS resulting from these proposed provisions in addition to the environmental impacts from a range of potential alternatives to the measures proposed in § 112.82(a) and § 112.83(b).

4. Scope of Proposed Rule and Implications to Land Use and Land Management

Under proposed § 112.4(a), farms with $25,000 or less of annual value of food sold are excluded from coverage of the rule. Comments to the Produce Safety proposed rule that raised environmental concerns in relation to the Produce Safety proposed rule requested that we consider increasing the $25,000 threshold to exclude a larger number of farms from the proposed rule and, thus, reduce overall environmental impacts of the rule. Comments also suggested that the Produce Safety rule, if finalized as proposed, would cause small farmers to go out of business and potentially result in negative environmental impacts due to changes in land use or land management. Therefore, we plan to consider the possible environmental impacts in the EIS resulting from this proposed provision in addition to the environmental impacts of potential alternatives to the $25,000 threshold for out-of-scope farms proposed in § 112.4(a).

Table 1 provides a list of potential alternatives to each of the issues discussed previously. This table is not intended to provide a comprehensive list of issues and potential alternatives, but rather is intended to provide a range of options for environmental consideration in the EIS. We invite comment, as part of the scoping process, on whether there are other issues we should consider for indepth analysis in the EIS and any alternatives to those issues.

TABLE 1—LIST OF ISSUES AND CORRESPONDING POTENTIAL ALTERNATIVES TO BE CONSIDERED IN THE ENVIRONMENTAL IMPACT STATEMENT FOR THE PRODUCE SAFETY RULE

Issue	Proposed action	Potential alternatives
1. Microbial standard for agricultural water.	A. Proposed § 112.44(c), which states: "When agricultural water is used during growing activities for covered produce (other than sprouts) using a direct water application method you must test the quality of water in accordance with one of the appropriate analytical methods in subpart N. If you find that there is more than 235 colony forming units (CFU) (or most probable number (MPN), as appropriate) generic *E. coli* per 100 mL for any single sample or a rolling geometric mean (n=5) of more than 126 CFU (or MPN, as appropriate) per 100 mL of water, you must immediately discontinue use of that source of agricultural water and/or its distribution system for the uses described in this paragraph". See discussion in 78 FR 3503 at 3568–3569. (Proposed § 112.3(c) defines "direct water application method" as using agricultural water in a manner whereby the water is intended to, or is likely to, contact covered produce or food-contact surfaces during use of the water.)	i. No action. ii. As proposed, i.e., no more than 235 colony forming units (CFU) (or most probable number (MPN), as appropriate) generic *E. coli* per 100 mL for any single sample or a rolling geometric mean (n=5) of more than 126 CFU (or MPN, as appropriate) per 100 mL of water. iii. A detectable generic limit *E. coli* per 100 mL less stringent than proposed. iv. A flexible water quality standard that allows for adjustment to a specified microbial quality standard based on mitigation steps that occur after application of agricultural water and prior to consumption. For example, the World Health Organization recommends a minimum microbial quality for water of 1,000 CFU generic *E. coli* per 100 mL for water used on root crops that are eaten raw, and 10,000 CFU generic *E. coli* per 100 mL for water used on leaf crops, which is dependent upon a 2-log reduction due to die-off between last irrigation and consumption (includes die-off in the field and during distribution) and a 1-log reduction attributed to washing prior to consumption. v. For each of the options mentioned, consider the environmental impacts of two different interpretations of the definition of "direct water application method" in § 112.3(c): (1) To include root crops that are drip irrigated; and (2) to exclude root crops that are drip irrigated.
2. Minimum application intervals for biological soil amendments of animal origin.	A. Proposed § 112.56(a)(1)(i), which states: "If the biological soil amendment of animal origin is untreated, then the biological soil amendment of animal origin must be applied in a manner that does not contact covered produce during application and minimizes the potential for contact with covered produce after application, and then the minimum application interval is 9 months". See discussion in 78 FR 3503 at 3581, 3582.	i. No action. ii. As proposed, i.e., applied in a manner that does not contact covered produce during application and minimizes the potential for contact with covered produce after application, and then the minimum application interval is 9 months. iii. Applied in a manner that does not contact covered produce during application and minimizes the potential for contact with covered produce after application, and then the minimum application interval is 0 days. iv. U.S. Department of Agriculture's National Organic Program (USDA/NOP) application intervals for the use of raw manure as a soil amendment, i.e., 90 days or 120 days before harvest, depending on whether or not the edible portion of the crop has direct contact with the soil (as specified in 7 CFR 205.203(c)(1)).

TABLE 1—LIST OF ISSUES AND CORRESPONDING POTENTIAL ALTERNATIVES TO BE CONSIDERED IN THE ENVIRONMENTAL IMPACT STATEMENT FOR THE PRODUCE SAFETY RULE—Continued

Issue	Proposed action	Potential alternatives
		v. Applied in a manner that does not contact covered produce during application and minimizes the potential for contact with covered produce after application, and then the minimum application interval is 6 months. vi. Applied in a manner that does not contact covered produce during application and minimizes the potential for contact with covered produce after application, and then the minimum application interval is 12 months.
	B. Proposed § 112.56(a)(4)(i), which states: "If the biological soil amendment of animal origin is treated by a composting process in accordance with the requirements of § 112.54(c) to meet the microbial standard in § 112.55(b), then the biological soil amendment of animal origin must be applied in a manner that minimizes the potential for contact with covered produce during and after application, and then the minimum application interval is 45 days". See discussion in 78 FR 3503 at 3583.	i. No action. ii. As proposed, i.e., applied in a manner that minimizes the potential for contact with covered produce during and after application, and then the minimum application interval is 45 days. iii. Applied in a manner that minimizes the potential for contact with covered produce during and after application, and then the minimum application interval is 0 days. iv. Applied in a manner that minimizes the potential for contact with covered produce during and after application, and then the minimum application interval is 90 days.
3. Measures related to animal grazing and animal intrusion.	A. Proposed § 112.82(a), which states: "An adequate waiting period between grazing and harvesting for covered produce in any growing area that was grazed to ensure the safety of the harvested crop". See discussion in 78 FR 3503 at 3587.	i. No action. ii. As proposed, i.e., an adequate waiting period between grazing and harvesting. iii. A minimum waiting period of 9 months, consistent with proposed § 112.56(a)(1)(i) for the use of raw manure as a soil amendment. iv. A minimum waiting period of 90 days and 120 days, consistent with the USDA/NOP-specified application intervals for the use of raw manure as a soil amendment.
	B. Proposed § 112.83(b), which states: "If animal intrusion, as made evident by observation of significant quantities of animals, animal excreta or crop destruction via grazing, occurs, you must evaluate whether the covered produce can be harvested in accordance with the requirements of § 112.112". See discussion in 78 FR 3503 at 3587.	i. No action. ii. As proposed, i.e., if animal intrusion occurs, you must evaluate whether the covered produce can be harvested, and you must take all measures reasonably necessary to identify, and not harvest, covered produce that is reasonably likely to be contaminated. iii. If animal intrusion is reasonably likely to occur, take measures to exclude animals from fields where covered produce is grown.
4. Scope of proposed rule and implications to land use.	A. Proposed § 112.4(a), which excludes farms with $25,000 or less of annual value of food sold from coverage of the rule. See discussion in 78 FR 3503 at 3549.	i. No action. ii. As proposed, i.e., farms with $25,000 or less of annual value of food sold are excluded from coverage of the rule. iii. Farms with $50,000 or less of annual value of food sold are excluded from coverage of the rule. iv. Farms with $100,000 or less of annual value of food sold are excluded from coverage of the rule. v. Farms with $25,000 or less of annual value of covered produce sold are excluded from coverage of the rule.

II. How To Participate in the Public Meeting

FDA is holding the public meeting on the scope of the EIS for the proposed rule to establish standards for growing, harvesting, packing, and holding of produce for human consumption to inform the public of the provisions of the proposed rule that may significantly affect the quality of the human environment and anticipated alternatives we plan to consider in the EIS, to provide information about the EIS process (including how to submit comments, data, and other information to the rulemaking docket), to solicit oral stakeholder and public comments on the scope of the EIS, and to respond to questions about the EIS. The meeting will be held on April 4, 2014, from 1 p.m. until 5 p.m., at Wiley Auditorium,

Harvey W. Wiley Federal Bldg., 5100 Paint Branch Pkwy., College Park, MD 20740. Due to limited space and time, FDA encourages all persons who wish to attend the meeting to register early and in advance of the meeting. There is no fee to register for the public meeting, and registration will be on a first-come, first-served basis. Onsite registration will be accepted, as space permits, after all preregistered attendees are seated.

Those requesting an opportunity to make an oral presentation during the time allotted for public comment at the meeting are asked to submit a request in advance and to provide information about the specific topic or issue to be addressed. Due to the anticipated high level of interest in presenting public comments and the limited time available, FDA is allocating 4 minutes to each speaker to make an oral presentation. FDA will provide opportunities to submit written comments at the meeting; there will not be an opportunity to display materials such as slide shows, videos, or other media during the meeting. If time permits, individuals or organizations that did not register in advance may be granted the opportunity to make an oral presentation. FDA would like to maximize the number of individuals who make a presentation at the meeting and will do our best to accommodate all persons who wish to make a presentation or express their opinions at the meeting. A court recorder will be available on the meeting premises to accept additional oral remarks.

FDA encourages persons and groups who have similar interests to consolidate their information for presentation by a single representative. After reviewing the presentation requests, FDA will notify each participant before the meeting of the approximate time their presentation is scheduled to begin, and remind them of the presentation format (i.e., 4-minute oral presentation without visual media).

While oral presentations from specific individuals and organizations will be necessarily limited due to time constraints during the public meeting, stakeholders may submit electronic or written comments discussing any issues of concern to the administrative record (the docket) for the rulemaking. All relevant data and documentation should be submitted with the comments to Docket No. FDA–2011–N–0921.

Table 2 of this document provides information on participation in the public meetings:

TABLE 2—INFORMATION ON PARTICIPATION IN THE MEETINGS AND ON SUBMITTING COMMENTS TO THE RULEMAKING DOCKETS

	Date	Electronic address	Address	Other information
College Park, MD Public meeting.	April 4, 2014, from 1 p.m. to 5 p.m.	*http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm.*	Wiley Auditorium, Harvey W. Wiley Federal Bldg., 5100 Paint Branch Pkwy., College Park, MD 20740.	
Deadline for registration	March 28, 2014	*http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm* Docket No. FDA–2011–N–0921.	We encourage you to use electronic registration if possible.[1]	There is no registration fee for the public meetings. Early registration is recommended because seating is limited.
Request to make a Public Comment.	March 28, 2014	*http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm.*[2]	.....	Requests made on the day of the meeting to make an oral presentation will be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov*, including any personal information provided.
Request special accommodations due to a disability.	March 28, 2014	Cynthia Wise, email: *cynthia.wise@fda.hhs.gov.*	See **FOR FURTHER INFORMATION CONTACT.**	
Closing date for comments.	April 18, 2014.			

[1] For questions about registering for the meeting, to register by phone, or to submit a notice of participation by mail, FAX or email, contact: Rick Williams, c/o FDA EIS, 72 Loveton Circle, Sparks, MD 21152; 410–316–2377; FAX: 410–472–3289; email: *RWilliams@jmt.com.*

[2] You may also request to make an oral presentation at the public meeting via email. Please include your name, title, firm name, address, and phone and FAX numbers as well as the full text, comprehensive outline, or summary of your oral presentation and send to: Cynthia Wise, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 240–402–1357, email: *cynthia.wise@fda.hhs.gov.*

III. Comments, Transcripts, and Recorded Video

Information and data submitted voluntarily to FDA during the public meeting will become part of the administrative record for the relevant rulemaking and will be accessible to the public at *http://www.regulations.gov.* The transcript of the proceedings from the public meeting will become part of the administrative record for each relevant rulemaking. Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and at FDA's FSMA Web site at: *http://www.fda.gov/Food/GuidanceRegulation/FSMA/default.htm.* It may also be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. Additionally, FDA will be live Webcasting and recording the public meeting. Once the recorded video is available, it will be accessible at FDA's FSMA Web site at *http://www.fda.gov/Food/*

GuidanceRegulation/FSMA/default.htm.

IV. Request for Comments

Interested persons may submit either electronic comments regarding the issues to be included in the EIS for the proposed rule 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.*

V. Reference

The following reference has 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 is available electronically at *http://www.regulations.gov.*

1. Statement from FDA Deputy Commissioner for Foods and Veterinary Medicine, Michael Taylor, on Key Provisions of the Proposed FSMA Rules Affecting Farmers. December 19, 2013, available from *http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm379397.htm?source=govdelivery&utm_medium=email&utm_source=govdelivery.*

Dated: March 5, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–05181 Filed 3–10–14; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–AL–0002; FRL–9907–75-Region 4]

Approval and Promulgation of Implementation Plans: Alabama: Error Correction and Disapproval of Revisions to the Visible Emissions Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is announcing an extension of the public comment period for the proposed rule entitled "Approval and Promulgation of Implementation Plans: Alabama: Error Correction and Disapproval of Revisions to the Visible Emissions Rule." The proposed rule was published in the **Federal Register** on February 13, 2014. Written comments on the proposed rule were to be submitted to EPA on or before March 17, 2014 (30-day comment period). As requested, EPA is extending the original public comment period by 60 days. The public comment period will now close on May 16, 2014.

DATES: Comments must be received on or before May 16, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–AL–0002, 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–2005–AL–0002," 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, Chief, 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.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2005–AL–0002." 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: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2005–AL–0002. All documents in the docket are listed on *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 through *www.regulations.gov* or in hard copy at the 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. 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 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was signed by the Acting Region 4 Regional Administrator on January 24, 2014, and published in the **Federal Register** on February 13, 2014 (79 FR 8645). The proposed action provided a 30-day public comment period. EPA has received four requests for an additional 30 to 60 days to

comment on the proposed rule. EPA has considered these requests and has decided to extend the comment period for an additional 60 days. The comment period now closes on May 16, 2014.

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

Dated: February 28, 2014.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2014–05222 Filed 3–10–14; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 13–184; DA 14–308]

Wireline Competition Bureau Seeks Focused Comment on E-Rate Modernization

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireline Competition Bureau seeks focused comment on three issues raised in the *E-rate Modernization NPRM* that merit further inquiry as the Commission moves towards the goal of meeting schools' and libraries' broadband connectivity needs. The *E-rate Modernization NPRM* sought broad comment on modernizing the E-rate program and proposed three goals for the program: ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning; maximizing the cost-effectiveness of E-rate funds; and streamlining the administration of the program.

DATES: Comments are due on or before April 7, 2014 and reply comments are due on or before April 21, 2014.

ADDRESSES: Interested parties may file comments on or before April 7, 2014 and reply comments on or before April 21, 2014. All pleadings are to reference WC Docket No. 13–184. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies, by any of the following methods:

- 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.
- *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 detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Regina Brown at (202) 418–0792 or James Bachtell at (202) 4182694, Telecommunications Access Policy Division, Wireline Competition Bureau or TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in WC Docket No. 13–184; DA 14–308, released March 6, 2014. The full text of this document is available for inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via email at FCC@BCPIWEB.com. It is also available via the Internet in the Commission's Electronic Document System (EDOCS) at *http://www.fcc.gov/documents* under WC Docket No. 13–184.

Synopsis

1. The Wireline Competition Bureau (Bureau) seeks focused comment on three issues raised in the *E-rate Modernization NPRM, 78 FR 51597,* August 20, 2013, that merit further inquiry as the Commission moves towards modernizing the E-rate program to meet schools' and libraries' broadband connectivity needs. The *E-rate Modernization NPRM* sought broad comment on and proposed three goals for the program: (1) Ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning; (2) maximizing the cost-effectiveness of E-rate funds; and (3) streamlining the administration of the program. The Commission has received more than 1,500 comments and ex parte filings in response to the *E-rate Modernization NPRM* including numerous comments from individual educators and school administrators; school districts and consortia; librarians and library systems; E-rate vendors and educational content providers; and other interested public and private organizations.

2. The record in this proceeding demonstrates overwhelming agreement among stakeholders that the E-rate program has been a crucial part of helping our nation's schools and libraries connect to the Internet. The record also shows a strong commitment to ensuring that the E-rate program quickly evolve to meet the ever-growing need for high-capacity broadband so our students and communities have access to 21st Century educational tools. The record is replete with support and suggestions for how to meet the goals for the E-rate program proposed in the *E-rate Modernization NPRM.*

3. Based on the extensive input the Commission has received, it appears that meeting the Commission's proposed goals for the E-rate program will require that, in the near term, the program focus on providing the support necessary to ensure schools and libraries can afford high-speed connectivity to and within schools and libraries, even as the Commission develops a long-term approach that allows applicants to scale up capacity while driving down costs. More specifically, the record underscores the importance of providing consistent and broadly available support for the equipment and services needed to enable high-capacity wireless broadband within schools and libraries; greater support, at least in the short term, for last-mile deployments needed to connect schools and libraries that do not currently have access to high-speed connections; a support methodology that allows applicants to capture the long-term cost-efficiencies associated with access to scalable, high-speed connections; less support for voice services, as the cost of voice services transition in the long run to the marginal cost of packet-based voice services provided over high-capacity broadband connections; incentives for making cost-effective purchasing decisions, including incentives and opportunities for schools and libraries to benefit from economies of scale in purchasing supported services; and as much administrative simplicity as possible, while protecting against waste, fraud and abuse.

4. In light of these themes that emerge from the record, as the Commission seeks to modernize the E-rate program, there are three issues raised in the *E-rate Modernization NPRM* that merit further focused inquiry at this time: (1) How best to focus E-rate funds on high-capacity broadband, especially high-speed Wi-Fi and internal connections; (2) whether and how the Commission should begin to phase down or phase out support for traditional voice services

in order to focus more funding on broadband; and (3) whether there are demonstration projects or experiments that the Commission should authorize as part of the E-rate program that would help the Commission test new, innovative ways to maximize cost-effective purchasing in the E-rate program. We seek further comment on how the issues below relate to the goals for the E-rate program that the Commission proposed in the *E-rate Modernization NPRM* and how they comport with relevant statutory requirements.

5. At the same time, the Commission continues to evaluate all of the input received in response to the *E-rate Modernization NPRM.* The issues we raise in this document do not define the full universe of possible changes the Commission could make in an order modernizing the E-rate program.

I. Focused Funding for High-Capacity Broadband

6. Commenters to this proceeding have made clear the importance of focusing E-rate support on high-speed connectivity to and within schools and libraries. As educational technology has improved in recent years, equipment and cabling used to deploy the interior pieces of broadband networks have become increasingly important, yet the E-rate program has provided less support and funded fewer applicants seeking support for such internal connections. Numerous commenters have identified support for internal connections as one of the program areas where modernization is most urgent and most important. Accordingly, in this section we ask about methods to improve this funding going forward. We also take this opportunity to ask about improvements to the existing priority one funding system for last-mile deployments for high-capacity broadband.

7. In seeking further comment on how best to focus E-rate funding on high-capacity broadband, we note that an initial review by Commission staff has found that the Commission can free up an additional $2 billion over the next two years to help support broadband networks in our nation's schools and libraries, offering an opportunity to assess better ways to prioritize and distribute program funding at support levels higher than the current program cap. We seek comment on how best to use such additional funds to support the Commission's efforts to provide high-capacity broadband within and to schools and libraries, as described in more detail below.

A. Broadband Deployment Within Schools and Libraries

8. Stakeholders in this proceeding contend that the deployment of equipment inside school and library facilities is as essential to comprehensive broadband service at a given location as the high-speed connectivity to that facility. For example, Wi-Fi has transformed computing and education, creating the possibility of one-to-one learning in classrooms and libraries, and freeing desks and work stations from wired connections. A survey of school district leaders conducted by the Consortium for School Networking (CoSN) and Market Data Retrieval in 2013, however, showed that 57 percent of district leaders do not believe that their schools' wireless networks have the capacity to handle a one-to-one student-to-device deployment.

9. Internal connections essential to extend broadband throughout schools and libraries are currently eligible for support in the E-rate program as priority two services. However, some commenters have expressed concern because, in most funding years, there have only been sufficient funds to provide priority two support to schools and libraries in the highest bands of the discount matrix. Commenters generally agree that the rule that the Commission adopted limiting any school or library to two years of priority two support in every five year period (the two-in-five rule) does not appear to have achieved its intended goal of substantially spreading the available funds. Moreover, as demand for priority one funding continues to grow, the ability to provide any priority two support is an increasing challenge.

10. Therefore, to address the need for funding for the services and equipment necessary to ensure high-capacity broadband within schools and libraries, we seek comment on whether the Commission should change the current priority two funding category (including no longer supporting legacy services that are currently eligible for priority two funding), by allocating annually a set amount of E-rate funds to provide schools and libraries with funding for LANs and Wi-Fi networks, which are essential to ensuring high-capacity broadband reaches students and library patrons.

1. Scope of Services To Be Funded

11. Under this approach, only equipment and supporting software that is essential to getting high-capacity broadband from the building's front door to the computer, tablet, or other learning devices in schools and libraries would be eligible for internal connection support. We seek comment on what equipment is essential for such purposes. Some commenters have suggested that such equipment includes internal wiring, switches and routers, wireless access points, and the software supporting these components. We seek comment on whether these are the right categories of equipment and software to fund for this purpose.

12. Other commenters have suggested other technology that improves the efficiency of the broadband networks and should therefore also receive E-rate support. For example, several commenters have argued that E-rate should support caching through content servers because caching can allow schools to reduce their broadband demand by as much as half. Another commenter noted that slow firewall processing, outdated content filtering, and other similar internal network problems create significant speed bottlenecks on school and library networks. We now seek further focused comment on what services, software, or equipment are necessary to enable high quality, high-capacity networks inside schools and libraries, and whether such services, software and equipment should qualify for support?

2. Access to Funding

13. The Commission has acknowledged that under the current system only a small percentage of E-rate recipients receive the bulk of the internal connection funding. We seek comment on ways to provide more widespread access to funding for internal connections in order to enable schools and libraries nationwide to take advantage of high-capacity broadband to their buildings with robust internal networks. We seek particular comment on three potential ways to prioritize applications for deployment costs in the event that the demand for internal connection funds exceeds availability.

a. Five-Year Upgrade Cycle

14. Consistent with the method used to prioritize priority two funding today, the Commission could prioritize funding by discount level, with rotating eligibility to provide as many schools and libraries as possible access to funding over a five-year upgrade cycle. Information in the record demonstrates that basic Wi-Fi and LAN equipment has a useable lifespan of five to seven years. Given this information, we seek comment on limiting an applicant's ability to receive internal connections funding to once every five years while

retaining the existing prioritization method.

15. If the Commission were to adopt a one-in-five rule to replace the current two-in-five rule, how much funding would be needed to ensure that funds were available to meet the needs of all eligible schools and libraries? Would the Commission need to front-load support for eligible internal connections in the first funding years to meet the existing needs of schools and libraries? Is five years the right amount of time for such a funding cycle? If the Commission were to adopt this approach, should the one-in-five limitation apply at the level of applicants or, as it does today, at the level of individual school and library buildings?

16. If available funding is insufficient to fund all applicants at a particular discount level in a given funding year, how should the Commission decide which applicants to fund? Should it for example, prioritize funding for applicants within a discount level by giving preference to the applicants with the highest percentage of students receiving free and reduced school lunches?

b. Rotating Eligibility

17. Alternatively, we seek comment on limiting an applicant's ability to receive funding for internal connections that support high-capacity broadband to a single funding year until all other applicants have received support or declined the opportunity to seek funding in at least one funding year, starting in funding year 2015. This approach is consistent with one proposed by the State E-rate Coordinators Alliance (SECA) and supported by other commenters. This approach would ensure that all applicants are able to receive funding over time, but once they receive funding, applicants could not be certain about when they might next be eligible for internal connections funding. We seek comment on this tradeoff. If the Commission were to adopt this approach, applicants could have an incentive to inflate their original requests in their first year of eligibility. What safeguards should we adopt to address this problem?

18. If the Commission were to use available funds to front-load support for eligible internal connections in funding years 2015 and 2016, would this obviate some of the drawbacks to this approach? If so, how much support should the Commission provide in funding years 2015 and 2016, and how much should it provide annually after that to ensure all schools and libraries have robust internal connections? If the Commission were to adopt this approach, should the rotating eligibility limitation apply at the level of applicants or, as the two-in-five rule does today, at the level of individual schools and library buildings?

19. If the Commission were to adopt this rotating eligibility approach, how should it prioritize funding for internal connections? Should it continue to fund eligible applications at the highest discount level first? If funding is insufficient to fund all eligible applications at a particular discount level in a given funding year, should the Commission give preference to the applicants with the highest percentage of students receiving free and reduced school lunches?

c. Annual Allocation for Internal Connections

20. As a third option, we seek comment on adopting a funding method that would provide some support for internal connections that support high-capacity broadband to all eligible applicants in each funding year, as opposed to the cyclical funding methods discussed above. By making at least some funding available annually for each applicant, this approach would prevent a small number of applicants from disproportionately using available funding and give all schools and libraries an opportunity to upgrade at least some of their facilities each year. In the *E-rate Modernization NPRM*, the Commission sought comment on a similar allocation of funds that would apply for the entire E-rate program. Many commenters were supportive, but many others expressed concern that this funding approach would not fully capture the diversity of costs faced by applicants across the country. Are these concerns mitigated in the context of internal connections, and particularly LAN and Wi-Fi deployments? In particular, unlike the costs of broadband connectivity to schools, we expect that the prices of many parts of LAN and Wi-Fi deployments (*e.g.*, switches, routers, and wireless access points) should vary little based on the geographic location of schools and should generally scale proportionally with the size of the student body. We seek comment on these expectations.

21. More specifically, we seek comment on using the following simplified version of the formula proposed by Funds for Learning and a coalition of schools and school groups to set available funding levels for each applicant.

Allocation Formula

$$\text{Available Support} = \text{Greater of} \begin{cases} \text{Per-Student Allocation} \times \text{Number of Students} \times \text{Discount Rate} \\ \text{Per-Building Allocation} \times \text{Number of Buildings} \times \text{Discount Rate} \end{cases}$$

By identifying available funds and estimating the total pre-discount requests that could be supported with those funds, the Commission would arrive at an amount to be allocated to each applicant. Applicants would be entitled to receive funds, applying their usual discounts, towards the purchase of eligible internal connections up to the pre-discount allocation. Under this approach if, in order to ensure that small schools and libraries would receive sufficient funding, the Commission were to adopt a per-applicant or per-building minimum allocation as part of the formula, what should that minimum per-building or per-applicant support level be? If the Commission adopts such an approach for school applicants, how should it calculate the annual allocation for libraries?

22. In addition to ensuring that all applicants have the opportunity to receive at least some internal connection funding each year, adopting this annual allotment could have the benefit of providing applicants certainty about the amount of funding that would be available to them each year. We seek comment on this consideration. Would funding certainty over a multi-year period create new opportunities for up-front financing to cover equipment upgrades in a given year? We also seek comment on how to best utilize any remaining funding if some applicants request less than their allocated amount. Should such funding be made available

to increase the allocation to other applicants in the same funding year? Should it be held over to subsequent funding years? Or should we adopt another approach? Finally, how should the Commission allow these funds to be spent by the applicants? Should district or library systems be required to spend those funds at specific schools or libraries in certain proportions? Or should each applicant have the flexibility to spend the funds as it decides across its district or library system?

d. Other Methods To Prioritize Internal Connections Funding

23. Are there variations on the options described above or other methods the Commission should consider employing to prioritize funding for high-capacity internal connections? Should it, for example, prioritize projects by the number of students impacted per dollar of funding? Should the Commission prioritize consortia applications?

B. Broadband Deployment to Schools and Libraries

24. The record reflects that some schools and libraries do not have access to high-capacity broadband connections to their buildings, and commenters have suggested that the Commission undertake a targeted effort to help support deployment of high-capacity, scalable last-mile connections to eligible schools and libraries that do not currently have access to connections that meet the connectivity goals laid out in the *E-rate Modernization NPRM.*

25. As explained in the *E-rate Modernization NPRM,* the E-rate program currently offers support for broadband construction to schools and libraries. However, commenters have explained that even with the current levels of E-rate support, some schools and libraries cannot afford to pay their share of the cost of deploying last-mile high-capacity broadband.

1. Scope of Services To Be Funded

26. In light of the record demonstrating that the costs of one-time construction projects, even though already supported by the E-rate program, can be cost-prohibitive, we seek comment on whether the Commission should undertake a limited initiative, within the existing priority one system, to incent the deployment of high-capacity broadband connections to schools and libraries. We invite stakeholders to offer examples of projects for which they would seek funding if the Commission adopts such an approach. Exactly what services should the Commission fund as part of this deployment effort? For instance, what types of fiber deployment or other high-capacity, scalable broadband technologies that meet the connectivity goals in the *E-rate Modernization NPRM,* should be eligible for funding?

27. In the *E-rate Modernization NPRM,* the Commission sought comment on how to ensure that broadband deployment to schools and libraries is done in a way that minimizes the recurring costs for both applicants and the E-rate program once deployment is complete. While the record indicates that new broadband deployments, once paid for, can dramatically lower recurring costs over time, it also reveals situations where monthly charges have remained high even after new deployments are complete and costs have been fully recovered. If the Commission does decide to provide some additional support for the capital costs associated with high-capacity deployment, how can it best ensure that the recurring costs associated with providing broadband over new connections is affordable for the applicants on a going-forward basis?

28. Should the Commission change the program's funding methodology as part of this deployment initiative? Would it be sufficient for the Commission to simply raise the discount rate for all applicants seeking deployment support by 10 percent or some other percentage? Or would it be better for the Commission to adopt a flat discount rate for all applicants? If so, what should this flat rate be? Are there some schools and libraries on Tribal lands, or in remote rural areas that cannot afford high-capacity broadband build-out without full support? Should the Commission consider full support for all applicants seeking support for broadband connectivity? While such an approach could encourage applicants to participate in the program and greatly increase broadband deployment to schools and libraries, how would the Commission ensure that applicants do not enter into agreements requiring excessive funding for broadband deployment?

29. Some commenters have explained that vendors often limit up-front deployment costs and instead collect the costs over several years as part of the cost of recurring services. Are there instances in which the Commission should authorize increased support for the recurring costs of broadband services over a period of time instead of, or in addition to, increased support for up-front costs, to the extent those recurring costs reflect time-limited recovery for capital investment? If so, over how long a period of time and under what circumstances?

2. Ensuring Equitable Distribution

30. We also seek comment on how best to distribute support among the applicants for high-speed connections to schools and libraries. In particular, if the Commission makes some additional deployment support available to eligible schools and libraries that do not already have access to high-speed scalable connections available at reasonable prices, how do we identify those schools and libraries? Should we rely on the broadband speed targets identified by the Commission in the *E-rate Modernization NPRM* and require applicants for this deployment funding to demonstrate their current Internet access service does not meet that metric? Should we consider future scalability of existing connections and/or available pricing when identifying eligible schools and libraries? Are there other methods the Commission should consider to determine the best projects to fund?

31. We also seek comment on ways to prioritize applications for deployment costs in the event that the demand for such funds exceeds availability. In the current E-rate program, when available funds do not meet demand, the applicants with the greatest economic need (*i.e.,* those with the highest percentage of students that qualify for free and reduced school lunches) are funded first at the 90 percent discount rate, then funding goes to those applicants eligible for 89 percent discount levels, and so on, until the available funds are exhausted. Eligible libraries receive the discount rate of the school district in which they are located. Should the Commission adopt a similar mechanism for distributing funding for deployment of high-capacity broadband to eligible schools and libraries?

32. As an alternative, we seek comment on adopting one or more objective impact and/or efficiency metrics to prioritize applications. For example, school applicants could be required to calculate the total number of students currently in buildings without infrastructure capable of meeting Commission-adopted speed goals. Those schools would then be upgraded to scalable, high-speed connections with E-rate support and applications could be scored based on the total cost per-student served. Should the Commission also consider prioritizing upgrades that do not increase the speed available to applicants, but dramatically reduce recurring costs following new investment (for example, if applicants

sought to upgrade from Internet access using two T3s to a single 100 Mbps metro Ethernet circuit, or to purchase WAN upgrades that allowed them to buy Internet access at a lower-priced point-of-presence)? If so, how much weight should be given to particular levels of reductions in recurring costs? If the Commission adopted multiple objective impact and/or efficiency metrics, how should they be evaluated together? For example, how should applications that reduce recurring costs be scored against those that include speed upgrades? Are there other methods the Commission could employ to prioritize funding for up-front deployment costs in the event demand exceeds availability?

33. Within the existing priority one system, applicants can receive E-rate support for some installation and special construction charges, but the cost of large projects must be prorated over three years or more. This limit may disproportionately harm rural and other applicants that face the largest deployment costs, especially because there are no exceptions for rural deployments or other unique circumstances. Would adopting one of the prioritization approaches above for deployment funding allow the Commission to relax this limit?

C. Encouraging Cost-Effective Purchasing

34. As the Commission considers how to focus E-rate funding on high-capacity connections to and within schools and libraries, are there additional steps the Commission can take to help ensure efficient use of E-rate funds spent on broadband projects? Below we seek comment on three possible ways to encourage cost-effective purchasing. We also invite commenters to offer other methods to encourage cost-effective E-rate purchasing.

35. *Consortium purchasing and bulk buying.* In the *E-rate Modernization NPRM,* the Commission sought comment on encouraging consortia and other bulk purchasing programs. If the Commission moves to support a more limited set of equipment and services for high-capacity internal connections, is there an opportunity for E-rate applicants to drive down prices of the products necessary for Wi-Fi and LAN connectivity through consortium purchasing or other forms of bulk buying? If so, what steps can the Commission take to encourage cost-effective consortia or other bulk purchasing of such products? Likewise, if the Commission focuses some additional funding on high-capacity broadband deployment to schools and libraries currently unserved by broadband services, should the Commission encourage the formation of consortia to encourage providers to offer affordable services to groups of schools and/or libraries? If so, what steps can the Commission take to encourage the formation of consortia that have the tools to engage in cost-effective purchasing? Are there steps the Commission can take to encourage currently successful consortia to add members, particularly eligible entities that currently lack the kind of purchasing power enjoyed by consortia? How can the Commission help ensure that the formation of such consortia does not unfairly disadvantage smaller providers that may be efficient local providers of high-capacity services?

36. Technology planning. Another possible approach to ensuring cost-effective purchasing of broadband services is to require technology planning. The Commission eliminated technology plan requirements for E-rate applicants seeking only support for priority one services in order to simplify the application process for schools and libraries. The *E-rate Modernization NPRM* sought comment on whether there were lessons learned from current and previous technology plan requirements and whether these requirements should be re-instituted. We now ask more specifically whether the Commission should require applicants that are seeking E-rate support for upgrading high-capacity connections to school buildings or libraries to demonstrate that they have a plan and the capacity to use those services within their buildings.

37. *Data collection and transparency.* In the *E-rate Modernization NPRM,* the Commission sought comment on how best to collect data on the speed and quality of school and library connections. The Commission also sought comment on what data to collect to support the proposed goal of maximizing cost-effective purchasing. As the Commission considers how best to provide support for broadband deployment within and to schools and libraries, we renew our request for comment on those data issues and on whether price transparency for E-rate supported services will help drive down those prices.

D. Streamlining the Administrative Process

38. As the Commission considers how best to support high-capacity broadband connections to and within schools and libraries, consistent with the Commission's proposed third goal of streamlining the administration of the E-rate program, we seek additional comment on how best to minimize the administrative burdens and overhead associated with applying for and receiving such support. Are there for example, simple changes the Commission can make to the E-rate information collections that will ease the administrative burdens on E-rate applicants and vendors that take advantage of a modernized E-rate program?

39. Are there changes to the invoicing deadlines the Commission should adopt to take into account a focus on broadband deployment? Under the current program, all recurring services must be completed during the funding year and invoices must be submitted no later than 120 days after the last day to receive service or 120 days after the FCC Form 486 Notification Letter date, whichever is later. Non-recurring charges for broadband projects, such as build-outs and special construction, must be completed by September 30 following the close of the funding year, with some exceptions. Because of the possibility that complex projects could take additional time beyond the funding year, should new deployment be given 18 months to be completed and invoiced from the date the funds are committed? Should complex internal connections projects be given 18 months to be completed and invoiced from the date the funds are committed? Could invoicing deadlines be synchronized with other federal funding programs to reduce complexity for applicants? Should applicants be allowed any extension of their project deadlines? If so, under what circumstances? Currently, special construction or build-outs can commence six months before the start of the funding year. Should the Commission give applicants additional time before the funding year to begin special construction to schools and libraries, or to begin internal infrastructure projects?

II. Reduced Support for Voice Services

40. In the *E-rate Modernization NPRM,* the Commission proposed to refocus the E-rate program on supporting high-capacity broadband connectivity to and within schools and libraries and recognized that it needed to confront the prospect of eliminating or reducing support for voice and other legacy services that do not advance the deployment of broadband. As schools and libraries increasingly transition to voice over Internet protocol (VoIP) services, we expect the price they pay for voice services to decrease. While many commenters expressed support for a transition from funding voice

telephony services, many such commenters also stressed the importance of phasing out support for voice services over a number of years, with several specifically endorsing a three- to five-year phase-out period. Below we seek comment on several specific ways for the Commission to transition away from support for voice services, and we invite commenters to offer other suggestions for how best to redirect E-rate support from voice to broadband services.

A. Reduced E-Rate Support for Voice Services

41. One way for the Commission to phase out support for voice services would be to gradually reduce the discount rate applicants receive for voice services. For example, the Commission could phase out support for voice services by 15 percentage points per year, beginning in funding year 2015, and continue to reduce support for such services by the same amount each year until funding for voice services is fully phased out in funding year 2020. We seek comment on this approach, as well as any other options for reducing E-rate spending on voice services. A gradual approach to reducing support for voice services should give schools and libraries time and the incentive to find lower priced solutions, and could also provide the Commission a period to evaluate whether it should adjust the phase out schedule. Although such an approach will result in some applicants receiving no support for voice services prior to funding year 2020, the most economically disadvantaged applicants—*i.e.* those that are currently eligible for a 90 percent discount rate—would be eligible for a 75 percent discount on voice telephony in funding year 2015, a 60 percent discount in funding year 2016, a 45 percent discount in 2017, a 30 percent discount in funding year 2018, and a 15 percent discount in funding year 2019.

42. We expect that the diminished availability of E-rate funding for voice services will be ameliorated by the fact that many applicants have transitioned or will transition to VoIP, which is generally considered to be more cost-efficient than traditional voice services. Although some commenters have suggested that the initial costs, including the cost of new handsets, to transition to VoIP is cost prohibitive for them, others indicate that they are embracing this trend. Our approach also takes into consideration that the growth of competitive options for voice services, such as VoIP, should drive down costs for voice services.

43. If the Commission elects to phase out support for voice beginning in funding year 2015, will schools and libraries have adequate time and resources to make needed adjustments? Commenters should consider that as the E-rate program increasingly supports high-capacity broadband, applicants may be eligible for increased levels of support for broadband services to and within schools and libraries. Will increased funding for these other types of services assist schools and libraries adjusting to decreasing levels of E-rate support for voice telephony services? Will increased support for high-capacity broadband networks to and within schools and libraries put applicants in a better position to transition to VoIP, and would E-rate still be supporting voice services, albeit indirectly, by supporting the infrastructure and services over which VoIP will ride? Would it be appropriate, therefore, to phase out support for voice services only once a school or library has gained access to high-capacity broadband? If so, we seek comment on whether we should adopt different voice phase-out dates on a case-by-case basis for individual schools or libraries, such as within one year after they have broadband that meets the goals for high-capacity broadband established in this proceeding.

44. We also seek comment on whether the entries for telephone services, telephone components, and interconnected VoIP in the Eligible Services List (ESL) include all of the types of voice services and components that should be covered by the five year phase out. Are there any services in these entries that should be excluded from the phase out? Are there other types of telephone services that are not specifically listed in the current ESL that should be subject to the phase out? Commenters should provide details on the specific voice services for which support should be phased out and provide detailed reasons for why certain services should be included or excluded from the list of targeted voice services.

B. Alternatives

45. The Commission may also decide to eliminate voice more quickly or to modify in some other way the current approach to supporting voice services. Therefore, we also seek comment on a number of alternative ways to approach funding for voice services, and we invite comment on the approaches we identify below, as well as variations on or alternatives to any such options.

46. *Elimination of voice support.* As an alternative to a phase down of voice support, should the Commission consider eliminating all support for voice services starting in funding year 2015? Such an approach would more quickly accomplish the Commission's goal of transitioning the E-rate program to supporting high-capacity broadband, but would also result in a more stark loss of support for applicants. Would it be more appropriate to provide additional time for applicants to make necessary budgetary changes by eliminating all support for voice services, but in a later funding year?

47. *Lower priority for voice services.* In the alternative, we also seek comment on retaining support for voice services under a lower priority. For example, SECA recommends that the Commission establish a new priority category for particular services, including voice services, to be funded at a flat 50 percent discount and that all applicants have equal access to the services in this category. Would it be more manageable for applicants to adjust to a larger reduction in funding the first year we implement a discount reduction for voice services because they know they will continue to receive such funding in future years? If we were to take such an approach, would it encourage applicants to move to more cost-effective solutions or would we need to take additional steps to encourage such transitions?

48. *Benchmark for VoIP support.* As voice communications technologies migrate from traditional TDM to IP should the Commission encourage this transition for schools and libraries using the E-rate program? Some commenters suggested that rather than phasing out E-rate support for all voice services, the Commission should continue to provide support for VoIP solutions. A possible middle ground would be for the Commission to identify inexpensive VoIP solutions for schools and libraries and use such services as a benchmark for how much support the E-rate program will provide for voice services.

49. If the Commission establishes a benchmark support amount, should the benchmark be on a per-user basis or some other basis? If the Commission establishes a per-user benchmark, how would applicants establish the number of users they have that provide the basis for the amount of their requested support? If the Commission establishes a benchmark support amount, should the E-rate program use this benchmark to support all voice services, regardless of the technology used? Or should the Commission use the benchmark derived support amount only to fund VoIP service and phase down support for all other voice services? Does the transition to VoIP services offer applicants an

opportunity to use consortium purchasing or other forms of bulk buying to drive down the cost of services while ensuring service quality? If so, what steps can the Commission take to encourage such purchasing?

C. Other Issues Related to Voice Services

50. As the Commission considers how to treat voice services as part of a modernized E-rate program, we seek comment on several specific issues relating to the funding of voice services and invite commenters to raise other issues.

51. *Internal connections.* We also seek comment on whether the Commission should end support for internal connections used for the delivery of voice services which are currently supported as priority two eligible services. Will discontinuing support for the internal connections used to deliver voice discourage applicants that had been considering a transition to VoIP? If VoIP is the most cost-effective option for voice services, we seek comment on whether the E-rate program should offer some short term incentive to applicants to transition to VoIP. Some commenters have already explained in this proceeding that they are reluctant to switch to VoIP for a variety of reasons. Would it be a sufficient incentive for applicants to transition to VoIP if the E-rate program provided an additional, one-time discount, such as 10 percent to 20 percent, to applicants in order to help defray the up-front costs necessary for the first year of a transition to VoIP?

52. *Rural areas or areas that lack access to broadband.* If the Commission decides to decrease support for voice services, some commenters have suggested that it continue to provide support for traditional voice services for those schools and libraries in remote rural areas, on Tribal lands, or elsewhere that lack access to high-capacity broadband and therefore will find it more challenging to adopt affordable VoIP options. For example, Alaska EED and Alaska State Library ask the Commission to consider extending the eligibility of voice services for locations that rely on satellite Internet service. We seek further comment on such an approach, and specific comment on how, if the Commission adopts such an exemption, it should determine which applicants should qualify? Would it be sufficient, for example, to simply require applicants to certify that there are no alternatives to POTS service in their geographic location?

53. Above we ask whether we should adopt different voice phase-out dates for individual schools or libraries, such as within one year after they have the high-capacity broadband that meets the goals established in this proceeding. Should we adopt this approach for rural schools and libraries, and require that for rural entities to qualify for an exemption from phase-out, they do not have the high-capacity broadband meeting the goals laid out in this proceeding? Should waivers or exemptions for those applicants in areas where VoIP is not available also be available for those applicants that can upgrade to VoIP but choose not to for financial or other reasons? Are there other types of schools and libraries that have unique needs meriting continued E-rate support for voice services at current levels? How should we define the areas or circumstances where support for voice service would continue to be supported under an alternative like this?

D. Easing Administrative Burdens

54. We seek comment on how best to reduce the administrative burden on E-rate applicants, regardless of which approach to supporting voice services the Commission takes in modernizing the E-rate program. If, for example, the Commission decides to phase down or phase out support for voice services, will calculating the correct amount of support due to applicants be administratively challenging? If so, what can the Commission do to ease the administrative burdens? Commenters have generally supported easing the burdens for multi-year contracts for recurring services, is that something that would be particularly useful in this context? Likewise, if the Commission moves to supporting voice using a per-user cost for VoIP services as a benchmark, are there administrative challenges the Commission should take into account, and are there things the Commission can do to ease the administrative burden of such an approach on schools and libraries?

III. Demonstration Projects

55. In the *E-rate Modernization NPRM,* the Commission sought comment on innovative approaches to encouraging efficiency in the E-rate program. Many commenters offered examples for how new approaches to planning and procuring services might be either (or both) more cost effective or more administratively efficient. At the same time, many commenters argued that local needs vary and local decision making has been one of the hallmarks of the E-rate program. As the Commission considers how best to meet the high-capacity connectivity needs of schools and libraries cost effectively, commenters supported the use of E-rate funds for projects of broad relevance to help identify and accelerate the development of best practices for achieving cost savings and innovation within E-rate.

56. We therefore now seek further comment on providing limited funding for well-defined, time-limited demonstration projects aimed at identifying and testing different approaches to meeting schools' and libraries' connectivity needs. Like the recently adopted *Technology Transitions Order* that solicited a broad set of experiments in order to develop facts and data, such projects would be set up as proof of concept experiments on innovative approaches to maximizing cost-efficient use of E-rate funding. These projects, although experimental, would provide needed services and equipment to E-rate eligible participants. We seek comment on funding a number of different types of demonstration projects based on Commission and stakeholder proposals. We also invite suggestions of other types of projects the Commission should conduct, the amount that should spend on any individual project, and the total budget for such projects.

57. As one example, the Commission sought comment on whether to allow experimentation in bulk purchasing of E-rate eligible services and equipment. We received a mixed reaction in response to the *E-rate Modernization NPRM* on whether the Commission should create a formal bulk buying program. While commenters expressed concern about the potential rigidity of requiring applicants to use such a program, they supported promoting the use of statewide or consortia bulk purchasing. We therefore seek further comment and proposals on how to conduct one or more initial experiments with bulk purchasing. A structured bulk buying demonstration project could test the cost-effectiveness and flexibility of such a program using just a small number of services or products, and would have the benefit of providing applicants with products and services they need as part of their broadband networks. For example, stakeholders could propose a project to gather data on bulk purchasing by a state, consortia, or regional research and education network for certain internal connection components, commercial internet access, or a VoIP solution that would replace traditional voice service. We seek comment on these types of projects and how to foster innovative and scalable practices.

58. A demonstration project could also provide an opportunity to gather

information and test proposals for implementation of a technical assistance program. For example, a demonstration project could test the effectiveness of hiring technical assistance experts to assist in network design or technical planning in a small number of districts, schools, and/or libraries whose costs fall outside a standard range for E-rate applicants. Another could test the use of consultants who are experts on connectivity costs and are un-affiliated with broadband providers.

59. We also seek comment on other proposals in the record. The American Library Association, for example, suggested a pilot program aimed at temporarily increasing the discount level for targeted libraries, prioritizing based on public-private partnerships, and providing technical assistance in order to "catalyze innovation" in advancing library services. If we were to fund such a project, how much funding should we provide and over what period of time? What sort of support could we expect the private sector to bring to such a project? Are there particular needs of libraries that we should focus on? What types of technical assistance would be particularly valuable, and to what end? What data should the Commission collect, as part of such a pilot program, and how should we use that data to measure progress towards success? Are there ways in which libraries' connectivity needs differ from those of schools? Are there other types of demonstration projects aimed at addressing the unique needs of libraries that the Commission should fund? With respect to all proposed demonstration projects, we request commenters be as specific as possible about the goals, the amount of funding, the process for selecting participants, the data to be collected and the timeline for any projects they propose or support.

60. Commenters also contributed other ideas, such as a pilot program to link last-mile infrastructure to BTOP funded networks, experiments on the use of consortia efforts, or projects that target rural areas. Another proposed a project to implement bulk purchasing of a platform to facilitate affordable access to advanced information services. We seek comment on these proposals and how such projects could be structured to gather data and evaluate success. These examples are not meant to be exhaustive. We welcome further ideas from stakeholders on the types of demonstration projects that can help identify cost efficiencies and drive down the cost of E-rate supported services. Are there other approaches used by enterprise customers to drive down their broadband costs that the Commission should experiment with in the E-rate program?

61. We seek specific comment on the process for selecting such proposals. In determining projects, should the Commission focus on experiments that examine cost impacts or consider other types of criteria, such as innovativeness? How should the Commission prioritize project funding? Should the length of any given demonstration project be limited to a single year? Should they be tied to specific E-rate funding years? Should the Commission select different kinds of projects to evaluate the different models' effects on driving down costs of E-rate eligible services? These projects should be designed to help the Commission gather data needed to inform decision-making and make future reforms. Therefore, we seek detailed comment on the data goals and how to evaluate the projects during and after selection. We also seek further ideas on how to share information and empower applicants to replicate project successes across the country.

62. Numerous commenters have confirmed the importance of streamlining the administration of the E-rate program. Therefore, as we consider demonstration projects, we also invite experiments that find ways to reduce the administrative burden on E-rate applicants.

IV. Procedural Matters

A. Regulatory Flexibility Analysis

63. The *E-rate Modernization NPRM* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposals. We invite parties to file comments on the IRFA in light of this additional document.

B. Paperwork Reduction Act Analysis

64. This document seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate document in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

C. Ex Parte Presentations

65. This matter 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 rule § 1.1206(b). In proceedings governed by rule § 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.

D. Comment Filing Procedures

66. *Comments and Replies.* We invite comment on the issues and questions set forth in this document and IRFA contained herein. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this document by April 7, 2014 and may file reply comments by April 21, 2014. All filings related to this document shall refer to WC Docket No. 13–184. Comments may be filed using the Commission's

Electronic Comment Filing System (ECFS) or by filing paper copies. *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.

• 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.

67. *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).

68. In addition, one copy of each paper filing must be sent to each of the following: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554; Web site: *www.bcpiweb.com;* phone: (800) 378–3160; (2) Lisa Hone, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 6–A326, Washington, DC 20554; email: *Lisa.Hone@fcc.gov;* and (3) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov.*

69. Filing and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *www.bcpi.com,* by email at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 or by facsimile at (202) 488–5563.

70. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in this document in order to facilitate our internal review process.

71. For additional information on this proceeding, contact James Bachtell at (202) 418–2694 or Regina Brown at (202) 418–0792 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

Federal Communications Commission.

Trent B. Harkrader,

Associate Bureau Chief, Wireline Competition Bureau.

[FR Doc. 2014–05433 Filed 3–10–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140106010–4010–01]

RIN 0648–XD069

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; 2014–2016 Atlantic Deep-Sea Red Crab Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the 2014–2016 Atlantic deep-sea red crab fishery, including an annual catch limit and total allowable landings. The intent of this action is to establish the allowable 2014–2016 harvest levels and other management measures to achieve the target fishing mortality rate, consistent with the Atlantic Deep-Sea Red Crab Fishery Management Plan.

DATES: Comments must be received on or before March 26, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2014–0004, by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0004,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

• Mail: Submit written comments to John Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publically accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the specifications document, including the Initial Regulatory Flexibility Analysis (IRFA) and other supporting documents for the specifications, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The specifications document is also accessible via the Internet at: *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281–9224.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic deep-sea red crab fishery is managed by the New England Fishery Management Council (Council). Regulations implementing the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP) appear at 50 CFR part 648,

subparts A and M. The regulations requiring triennial specifications are found at § 648.260.

The FMP requires the Council to recommend, on a triennial basis, the annual catch limit (ACL) and total allowable landings (TAL) that will control the fishing mortality rate (F). Estimates of stock size, coupled with the target F, allow for a calculation of acceptable biological catch (ABC), which is recommended by the Council's Scientific and Statistical Committee (SSC). The annual review process for red crab requires that the SSC review and make recommendations based on the best available scientific information, including catch/landing statistics, current estimates of fishing mortality, stock abundance, and juvenile recruitment. Based on the recommendations of the SSC, the Council makes a recommendation to the NMFS Regional Administrator.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to ensure that they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**, and after considering public comment, NMFS will publish final specifications in the **Federal Register**.

The FMP was implemented in October 2002 and was originally managed under a target total allowable catch (TAC) and days-at-sea (DAS) system that allocated DAS equally across the fleet of limited access permitted vessels. Amendment 3 to the FMP removed trip limit restrictions, and replaced the target TAC and DAS allocation with a TAL in order to ensure consistency with the ACL and accountability measure requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under Amendment 3, the 2011–2013 red crab specifications were set with an ABC equal to the long-term average landings of the directed red crab fishery (3.91 million lb, 1,775 mt), due to the lack of better scientific information on the red crab stock.

Proposed Specifications

Biological and Management Reference Points

The biological and management reference points currently in the Red Crab FMP are used to determine whether overfishing is occurring or if the stock is overfished. However, these reference points for red crab do not currently meet Magnuson-Stevens Act National Standard 1 criteria. As a result, there is insufficient information on the species to establish the maximum sustainable yield (MSY), optimum yield (OY), or overfishing limit (OFL), and ABC is defined in terms of landings instead of total catch.

2014–2016 Catch Limits

The Council's recommendation for the 2014–2016 red crab specifications are based on the results of the most recent peer-reviewed assessment of the red crab fishery carried out by the Data Poor Stocks Working Group in 2009 and recommendations from the SSC. The proposed specifications include a TAL that is the same as levels currently in effect under Amendment 3. Based on this information and the SSC's recommendation, the Council believes the TAL is safely below an undetermined overfishing threshold and adequately accounts for scientific uncertainty.

Recent landings, landing per unit of effort, port samples, discard information, and economic data suggest there has been no change in the size of the red crab stock since Amendment 3 was implemented in 2011. Therefore, the Council is proposing status quo specifications for the 2014–2016 fishing years:

	mt	Million lb
MSY	undetermined.	
OFL	undetermined.	
OY	undetermined.	
ABC	1,775	3.91.
ACL	1,775	3.91.
TAL	1,775	3.91.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Deep-Sea Red Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), which describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small shellfishing businesses (i.e., they have less than $5.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

The participants in the commercial red crab fishery were defined as those vessels issued limited access red crab permits. Information about vessel ownership has been made available for all federal permit holders, which allows for the identification of business entities that comprise multiple fishing vessels. As of December 2013, there are two business entities and four vessels with limited access red crab permits actively operating in the red crab fishery. The total value of landings from all sources from 2010 to 2012 averaged $3.46 million, so all business entities in the harvested sector can be categorized as small businesses for the purpose of the RFA.

Commercial Fishery Impacts

The proposed action will affect all business entities and four vessels in the directed red crab fishery. However, it is not expected to have any impact on the gross or average revenues for the fishery because it does not change the total allowable landings level, which is 3.913 million lb (1,775 mt). This harvest level is substantially higher than average landings in recent years (3.097 million lb (1,404 mt) from fishing years 2010–2012), and is not expected to constrain landings unless markets for red crab substantially improve or major new markets develop.

Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability. For the four participating vessels in 2010–2012, average total sales were $865,272 per vessel per year. Because the proposed action would retain current harvest levels, it would not directly constrain or reduce the gross revenues per vessel, nor would it impact the profits of

individual vessels. Therefore, it is not necessary to analyze impacts according to the dependence of each vessel in the red crab fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 5, 2014.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–05156 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 79, No. 47
Tuesday, March 11, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 6, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by April 10, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Forest Service

Title: Federal Excess Personal and Firefighter Property Program Administration.

OMB Control Number: 0596–0223.

Summary of Collection: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) programs provide state (including US territories) forestry agencies the opportunity to obtain excess Department of Defense and other Federal agencies equipment and supplies to be used in firefighting and emergency services. The authority to provide excess supplies to state agencies comes from Federal Property and Administration Services Act of 1949, as amended, 40 U.S.C., Sec 202. Authority to loan excess supplies comes from 10 U.S.C., Subtitle A, Part IV, Chapter 153, 2576b grants the authority for the FFP.

Forest Service is merging burden from approved OMB 0596–0218, "Federal Excess Personal Property" into the renewal of this collection.

Need and Use of the Information: Each state designates an Accountable Officer who is responsible for the integrity of the program within their respective state and completing the necessary documentation for each program in which the state participates. For this reason FEPP and FFP collects the state forestry agency contact information and the information of the Accountable Officer. Cooperative Agreement forms FS–3100–10 and/or FS–3100–11 are used to collect the required information from the participating state agency that outlines the requirements and rules for the cooperation. Participating state agencies must submit separate agreements if they desire to participate in both programs.

Description of Respondents: State and local government.

Number of Respondents: 56.

Frequency of Responses: Recordkeeping; Reporting: Annual.

Total Burden Hours: 600.

Charlene Parker,
Departmental Information Collection Clearance Officer.

[FR Doc. 2014–05223 Filed 3–10–14; 8:45 am]
BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2014–0004]

Codex Alimentarius Commission: Meeting of the Codex Committee on General Principles

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) is sponsoring a public meeting on March 27, 2014. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions to be discussed at the Twenty-eighth session of the Codex Committee on General Principles (CCGP) of the Codex Alimentarius Commission (Codex), that will take place in Paris, France, April 7–11, 2014. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 28th session of CCGP and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, March 27, 2014 from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The public meeting will take place at the Jamie L. Whitten Building, United States Department of Agriculture, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250.

Documents related to the 28th session of CCGP will be accessible via the Internet at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

Mary Frances Lowe, U.S. Delegate to the 28th session of CCGP, invites U.S. interested parties to submit their comments electronically to the following email address: *USCODEX@fsis.usda.gov.*

Call In Number: If you wish to participate in the public meeting for the 28th session of CCGP by conference call, Please use the call in number and participant code listed below:
Call in Number: 1 (888) 844–9904.
Participant Code: 5126092.

For Further Information About the 28th Session of CCGP Contact: Mary Frances Lowe, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250; Phone: (202) 205–7760, Fax: (202) 720–3157, Email: *USCODEX@fsis.usda.gov.*

For Further Information About the Public Meeting Contact: Barbara McNiff, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250; Phone: (202) 205–7760, Fax: (202) 720–3157, Email: *USCODEX@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCGP is responsible for dealing with procedural and general matters referred to it by the Codex Alimentarius Commission, for proposing amendments to the Codex Procedural Manual, and for reviewing and endorsing procedural provisions and texts forwarded by Codex Committees for inclusion in the Procedural Manual.

The Committee is hosted by France.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 28th session of CCGP will be discussed during the public meeting:

- Matters Referred to the Committee.
- Review of Risk Analysis texts of different committees—CCRVDF.
- Standards held at Step 8.
- Issues related to economic impact statements.
- Proposed amendment to the terms of reference of the Committee.
- Codex/OIE Cooperation.
- Representation of Officers of the CAC in Codex sessions other than sessions of the CCEXEC and CAC.
- Reference to information documents.
- Cooperation between General Subject Committees and Commodity Committees.
- Codex work management: Committees and critical review.
- Role of the Chair and Vice-chairs of the Codex Alimentarius Commission for the purpose of Rule V.1 of the Rules of Procedure.
- Other Business and Future work.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the March 27, 2014 public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 28th session of CCGP, Mary Frances Lowe (see **ADDRESSES**). Written comments should state that they relate to activities of the 28th session of CCGP.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC on: March 6, 2014.

Paulo Almeida,

Associate U.S. Manager for Codex Alimentarius.

[FR Doc. 2014–05220 Filed 3–7–14; 4:15 pm]

BILLING CODE 3410–DM–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

[02/28/2014 through 03/05/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
AJL Manufacturing, Inc	100 Holleder Parkway, Rochester, NY 14615.	03/05/2014	The firm manufactures sheet metal frames, cylinders and housings for electro-mechanical assemblies.

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: March 5, 2014.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2014–05208 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–20–2014]

Foreign-Trade Zone 175; Cedar Rapids, Iowa; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Cedar Rapids Airport Commission, grantee of FTZ 175, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on March 6, 2014.

FTZ 175 was approved by the FTZ Board on February 1, 1991 (Board Order 509, 56 FR 5383, 2/11/1991).

The current zone includes the following sites: *Site 1* (2,965 acres)—Cedar Rapids Municipal Airport Complex, located near the intersection of Highway 84 and Highway 218 in Cedar Rapids, Linn County; and, *Site 2* (.03 acres)—Iowa Midlands Supply, Inc., 1860 McCloud Place NE., Cedar Rapids, Linn County.

The grantee's proposed service area under the ASF would include Appanoose, Benton, Blackhawk, Buchanan, Cedar, Clinton, Davis, Delaware, Des Moines, Dubuque, Grundy, Henry, Iowa, Jackson, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Mahaska, Monroe, Muscatine, Poweshiek, Scott, Tama, Van Buren, Wapello, and Washington Counties, Iowa, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is adjacent to the Quad-Cities and Des Moines Customs and Border Protection ports of entry.

The applicant is requesting authority to reorganize its existing zone to include existing Site 1 as a "magnet" site. The applicant is also requesting that Site 2 be removed from the zone. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. No subzones/usage-driven sites are being requested at this time. The application would have no impact on FTZ 175's previously authorized subzone.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 12, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 27, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at Elizabeth.Whiteman@trade.gov or (202) 482–0473.

Dated: March 6, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–05247 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on March 25, 2014, 10:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4830, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda

Open Session

1. Opening remarks by the Chairman.
2. Opening remarks by the Bureau of Industry and Security.
3. Export Control Reform Update.

4. Presentation of papers or comments by the Public.

5. Working Group Updates.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 25 participants on a first come, first served basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than March 18, 2014.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 12, 2013, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: March 4, 2014.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2014–05184 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the "Department") and the International Trade Commission (the "ITC") that revocation of the antidumping duty order on steel wire garment hangers from the People's Republic of China ("PRC") would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* March 11, 2014.

FOR FURTHER INFORMATION CONTACT: Bob Palmer, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2008, the Department published the antidumping duty order on steel wire garment hangers from the PRC.[1] On September 3, 2013, the Department initiated the first five-year ("sunset") review of the antidumping duty order on steel wire garment hangers from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[2] As a result of its review, the Department determined that revocation of the antidumping duty order on steel wire garment hangers from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[3] On February 27, 2014, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on steel wire garment hangers from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Order

The merchandise that is subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. Also excluded from the scope of the order are chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule ("HTSUS") subheadings 7326.20.0020, 7323.99.9060, and 7323.99.9080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on steel wire garment hangers from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year ("sunset") review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: March 5, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–05245 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China*, 73 FR 58111 (October 6, 2008).

[2] *See Initiation of Five-Year ("Sunset") Review*, 78 FR 54237 (September 3, 2013).

[3] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 79 FR 1829 (January 10, 2014).

[4] *See Steel Wire Garment Hangers from China*, 79 FR 11126 (February 27, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–827]

Monosodium Glutamate From the Republic of Indonesia: Preliminary Negative Countervailing Duty Determination; and Preliminary Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia). The Department also preliminarily determines that critical circumstances do not exist for imports of MSG from Indonesia. The period of investigation is January 1, 2012, through December 31, 2012. The final determination will be issued 75 days after the date of this preliminary determination.[1] Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* March 11, 2014.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Milton Koch, Office VII, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1395 and (202) 482–2584, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The product covered by this investigation is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight.[2]

[1] Due to the closure of the Federal Government in Washington, DC on March 3, 2014, the Department reached this determination on the next business day (*i.e.*, March 4, 2014). *See Notice of Clorificotian: Applicotian of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Toriff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[2] For a complete description of the scope of the investigation, *see* Appendix 1 to this notice.

Methodology

The Department is conducting this countervailing duty (CVD) investigation in accordance with section 701 of the Tariff Act of 1930, as amended, (the Act). For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[3] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Critical Circumstances

In accordance with section 703(e)(1) of the Act, we preliminarily find that critical circumstances do not exist with respect to imports of MSG from Indonesia. A discussion of our determination can be found in the Preliminary Decision Memorandum.

Negative Preliminary Determination and Suspension of Liquidation

We have calculated a *de minimis* CVD rate for the sole producer/exporter of subject merchandise in this investigation. Consistent with section 703(b)(4)(A) of the Act, we have disregarded this rate and preliminarily determine that no countervailable subsidies are being provided to the production or exportation of the subject merchandise in Indonesia. Additionally, consistent with section 703(d)(1)(A) of the Act, the Department has not calculated an "all others" rate for all other producers or exporters because it has not made an affirmative preliminary determination.

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance regarding "Decision Memorandum for the Preliminary Negative Countervailing Duty Determination in the Countervailing Duty Investigation of Monosodium Glutamate from Indonesia; and Preliminary Negative Determination of Critical Circumstances in the Countervailing Duty Investigation," dated concurrently with this notice (Preliminary Decision Memorandum).

We preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate
PT. Cheil Jedang Indonesia	0.069 percent (*de minimis*)

Because we have preliminarily determined that the CVD rates in this investigation are *de minimis,* we will not direct U.S. Customs and Border Protection to suspend liquidation of entries of subject merchandise.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of announcement of its public announcement.[4] Interested parties may submit case and rebuttal briefs, as well as request a hearing.[5] For a schedule of the deadlines for filing case briefs, rebuttal briefs, and hearing requests, *see* the Preliminary Decision Memorandum.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

[4] *See* 19 CFR 351.224(b).

[5] *See* 19 CFR 351.309(c)–(d), 19 CFR 351.310(c).

Dated: March 4, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix 1

Scope of the Investigation

The scope of this investigation covers monosodium glutamate (MSG), whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15% or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this investigation regardless of physical form (including, but not limited to, substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging.

MSG has a molecular formula of $C_5H_8NO_4Na$, a Chemical Abstract Service (CAS) registry number of 6106–04–3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U.

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule (HTS) of the United States at subheading 2922.42.10.00. Merchandise subject to this investigation may also enter under HTS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. The tariff classifications, CAS registry number, and UNII number are provided for convenience and customs purposes; however, the written description of the scope is dispositive.

Appendix 2

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2014–05243 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–993]

Monosodium Glutamate From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of monosodium glutamate (MSG) from the People's Republic of China (PRC). The Department also preliminarily determines that critical circumstances exist for imports of MSG from the PRC. The period of investigation is January 1, 2012, through December 31, 2012. The final determination will be issued 75 days after the date of this preliminary determination.[1] Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* March 11, 2014.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Justin Neuman, Office VII, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1396 and (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The product covered by this investigation is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight.[2]

Methodology

The Department is conducting this countervailing duty investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[3] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Critical Circumstances

In accordance with section 703(e)(1) of the Act, we preliminarily find that critical circumstances exist with respect to imports of MSG from the PRC. A discussion of our determination can be found in the Preliminary Decision Memorandum.

Preliminary Determination and Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we determine separate subsidy rates for Langfang Meihua Bio-Technology Co., Ltd. and Tongliao Meihua Biological Sci-Tech Co., Ltd. (collectively, the Meihua

[1] Due to the closure of the Federal Government in Washington, DC on March 3, 2014, the Department reached this determination on the next business day (*i.e.,* March 4, 2014). *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[2] For a complete description of the scope of the investigation, *see* Appendix 1 to this notice.

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance regarding "Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Monosodium Glutamate from the People's Republic of China," dated concurrently with this notice (Preliminary Decision Memorandum). A list of topics discussed in the Preliminary Decision Memorandum can be found at Appendix 2 of this notice.

Group)[4] and Henan Lotus Flower Gourmet Powder Co., Ltd. (Henan Lotus), the individually-investigated producers/exporters of the subject merchandise. We also calculated an all-others rate. In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an "all-others" rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available. Where the rates for the investigated companies are all zero or *de minimis,* or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all-others rate using "any reasonable method." For Henan Lotus, which did not participate in this investigation, we determine a rate based solely on adverse facts available (AFA), in accordance with sections 776(a) and (b) of the Act. Therefore, the only rate in this investigation that is not *de minimis* or based entirely on facts otherwise available is the rate calculated for the Meihua Group. Consequently, the rate calculated for the Meihua Group is also assigned as the "all-others" rate. The overall preliminary subsidy rates are summarized in the table below:

Company	Subsidy rate (percent)
Langfang Meihua Bio-Technology Co., Ltd. and Tongliao Meihua Biological Sci-Tech Co., Ltd. (collectively, the Meihua Group)	13.41
Henan Lotus Flower Gourmet Powder Co., Ltd.[5]	404.03
All Others	13.41

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of MSG from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of merchandise in the amounts indicated above. Moreover, because we preliminarily find critical circumstances exist with respect to all exporters, in accordance with section 703(e)(2)(A) of the Act, we are directing CBP to apply the suspension of liquidation to any unliquidated entries entered, or withdrawn from warehouse for consumption, on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[6] Interested parties may submit case and rebuttal briefs, as well as request a hearing.[7] For a schedule of the deadlines for filing case briefs, rebuttal briefs, and hearing requests, *see* the Preliminary Decision Memorandum.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: March 4, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix 1

Scope of the Investigation

The scope of this investigation covers monosodium glutamate (MSG), whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15% or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this investigation regardless of physical form (including, but not limited to, substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging.

MSG has a molecular formula of $C_5H_8NO_4Na$, a Chemical Abstract Service (CAS) registry number of 6106–04–3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U.

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule (HTS) of the United States at subheading 2922.42.10.00. Merchandise subject to this investigation may also enter under HTS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. The tariff classifications, CAS registry number, and UNII number are provided for convenience and customs purposes; however, the written description of the scope is dispositive.

Appendix 2

List of Topics Discussed in the Preliminary Decision Memorandum

[4] We find these companies to be cross-owned in accordance with 19 CFR 351.525(b)(6)(vi). *See* the Preliminary Decision Memorandum.

[5] The Department applied AFA to this company; *see* the Preliminary Determination Memorandum at "Use of Facts Otherwise Available and Adverse Inferences," for a full description of our methodology.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c)–(d), 19 CFR 351.310(c).

[FR Doc. 2014–05241 Filed 3–10–14; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–011]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Justin Neuman at (202) 482–0486 or Milton Koch at (202) 482–2584, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 2014, the Department of Commerce (the Department) initiated the countervailing duty investigation of certain crystalline silicon photovoltaic products from the People's Republic of China (PRC).[1] Currently, the preliminary determination is due no later than March 28, 2014.

Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the Department concludes that the parties concerned in the investigation are cooperating and determines that the investigation is extraordinarily complicated, section 703(c)(1)(B) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation.

The Department determines that the parties involved in this proceeding are cooperating, and that the investigation is extraordinarily complicated.[2] Specifically, the Department is investigating numerous alleged subsidy programs in the PRC; these programs include preferential loans and directed credit, debt forgiveness, grants, tax incentives, export incentive programs, and the provision of goods, services, and land for less than adequate remuneration. Due to the number and complexity of the alleged countervailable subsidy practices being investigated, we determine that this investigation is extraordinarily complicated. Therefore, in accordance with section 703(c)(1)(B) of the Act, we are postponing the due date for the preliminary determination to not later than 130 days after the day on which the investigation was initiated. Thus, the deadline for completion of the preliminary determinations is now June 1, 2014. Because the deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day, June 2, 2014.[3]

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: March 5, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–05249 Filed 3–10–14; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–995]

Countervailing Duty Investigation of Grain-Oriented Electrical Steel From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") preliminarily determines that countervailable subsidies are being provided to producers and exporters of grain-oriented electrical steel from the People's Republic of China (the "PRC").[1] We invite interested parties to comment on this preliminary determination.

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

FOR FURTHER INFORMATION CONTACT: Yasmin Nair, David Cordell or Brian Davis, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202.482.3813, 202.482.0408 or 202.482.7924, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The scope of this investigation covers grain-oriented silicon electrical steel ("GOES"). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Methodology

The Department is conducting this countervailing duty ("CVD") investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the "Act"). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.[2] For a full description of the

[1] *See Certain Crystalline Silicon Photovaltaic Praducts From the Peaple's Republic of China: Initiation of Countervailing Duty Investigation,* 79 FR 4667 (January 29, 2014).

[2] *See* section 703(c)(1)(B) of the Act.

[3] *See Notice of Clarificatian: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005).

[1] Due to the closure of the Federal Government on March 3, 2014, Commerce reached this determination on the next business day (*i.e.*, March 4, 2014). *See Notice of Clarification: Application of "Next Business Day" Rule far Administrative Determinatian Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[2] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E)

Continued

methodology underlying our preliminary conclusions, see the Preliminary Decision Memo.[3] The Preliminary Decision Memo is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memo can be accessed directly at *http://trade.gov/enforcement.* The signed Preliminary Decision Memo and the electronic versions of the Preliminary Decision Memo are identical in content.

The Department notes that, in making these findings, we relied, in part, on facts available and, because one or more respondents did not act to the best of their ability to respond to the Department's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[4] For further information, see "Use of Facts Otherwise Available and Adverse Inferences" in the Preliminary Decision Memo.

Alignment

As noted in the Preliminary Decision Memo, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination in this investigation with the final determination in the companion antidumping duty ("AD") investigation of GOES from the PRC. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 16, 2014, unless postponed.

Preliminary Determination and Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each exporter/producer of the subject merchandise individually investigated. We preliminarily determine the countervailable subsidy rates to be:

Exporter/Producer	Subsidy rate %
Baoshan Iron & Steel Co., Ltd.	49.15
All-Others	49.15

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of GOES from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of merchandise in the amounts indicated above.

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we apply an "all-others" rate, which is normally calculated by weight-averaging the subsidy rates of the individual companies selected as respondents, excluding any zero or *de minimis* rates and any rates calculated entirely under section 776 of the Act. Therefore, for purposes of determining the "all others" rate and pursuant to sections 703(d) and 705(c)(5)(A) of the Act, we are using the subsidy rate calculated for Baoshan, 49.15 percent, for the "all others" rate, as referenced above.

Disclosure and Public Comment

The Department will disclose calculations performed for this preliminary determination to the parties within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments for all non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[5] A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[6] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined. Parties will be notified of the date and time of any hearing.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission ("ITC") of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: March 4, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memo

1. Scope Comments
2. Scope of the Investigation
3. Alignment
4. Respondent Selection
5. Injury Test
6. Application of the Countervailing Duty Law to Imports from the PRC
7. Subsidies Valuation
8. Benchmarks and Discount Rates
9. Use of Facts Otherwise Available and Adverse Inferences

of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Countervailing Duty Investigation of Grain-Oriented Electrical Steel from the People's Republic of China: Decision Memorandum for the Preliminary Determination," dated concurrently with this notice ("Preliminary Decision Memo").

[4] *See* sections 776(a) and (b) of the Act.

[5] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[6] *See* 19 CFR 351.310(c).

10. Analysis of Programs
11. Verification

[FR Doc. 2014–05259 Filed 3–10–14; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–824]

Ferrosilicon From Venezuela: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") preliminarily determines that ferrosilicon from Venezuela is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Tariff Act of 1930, as amended ("the Act"). The period of investigation is July 1, 2012, through June 30, 2013. The estimated weighted-average dumping margins of sales at LTFV are listed in the "Preliminary Determination" section of this notice. Interested Parties are invited to comment on this preliminary determination. Pursuant to requests from interested parties, we are postponing for 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we intend to make our final determination not later than 135 days after publication of this preliminary determination in the **Federal Register**.

DATES: *Effective Date:* March 11, 2014.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION: On August 8, 2013, the Department initiated the antidumping duty investigation on ferrosilicon from Venezuela.[1]

Scope of the Investigation

The merchandise covered by this investigation is all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes. Ferrosilicon is a ferroalloy containing by weight four percent or more iron, more than eight percent but not more than 96 percent silicon, three percent or less phosphorus, 30 percent or less manganese, less than three percent magnesium, and 10 percent or less any other element. The merchandise covered also includes product described as slag, if the product meets these specifications.

Ferrosilicon is currently classified under U.S. Harmonized Tariff Schedule ("HTSUS") subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Postponement of the Preliminary Determination

Based on a timely request from Petitioners,[2] on December 23, 2013, the Department postponed the deadline for the preliminary determination by 50 days to March 4, 2014, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).[3] [4]

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. Constructed export prices have been calculated in accordance with section 772 of the Act. Normal value has been calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice.[5] The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). IA ACCESS is available to registered users at *https://iaaccess.trade.gov,* and is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Producer or Exporter	Weighted-average margin (percent)
FerroAtlantica de Venezuela	27.27
All Others	27.27

Pursuant to section 735(c)(5)(A) of the Act, the "All Others" rate is based on the weighted-average dumping margin calculated for FerroAtlantica de Venezuela, the only company for which the Department calculated a rate.

Disclosure and Public Comment

The Department will disclose the calculations used in our analysis to parties in this investigation within five days of the date of publication of this notice. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties, who wish to request a hearing, or to participate if one is

[1] *See Ferrosilicon From the Russian Federation and Venezuela: Initiation of Antidumping Duty Investigations,* 78 FR 49471 (August 14, 2013).

[2] Petitioners are Globe Specialty Metals, Inc.; CC Metals and Alloys, LLC; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

[3] *See Ferrosilicon From the Russian Federation and Venezuela: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 78 FR 77423 (December 23, 2013).

[4] As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013). The tolled deadline for the preliminary determination of this investigation was January 13, 2014.

[5] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Ferrosilicon from Venezuela," dated concurrently this notice ("Preliminary Decision Memorandum").

[6] *See* 19 CFR 351.309(c) and (d).

requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety in IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[7] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing. Interested parties are invited to comment on the preliminary determination of this review.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of ferrosilicon from Venezuela, as described in the "Scope of the Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit[8] equal to the preliminary weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by Petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On January 14, 2014, FerroVen requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (135 days after publication of the preliminary determination), and agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period.[9] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting producer/exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. We are also extending the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month period to a six-month period.

U.S. International Trade Commission ("ITC") Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of ferrosilicon from Venezuela before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination. This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: March 4, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2014–05250 Filed 3–10–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–820]

Ferrosilicon From the Russian Federation: Preliminary Determination of Sales at Not Less Than Fair Value

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") preliminarily determines that ferrosilicon from the Russian Federation ("Russia") is not being, nor is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Tariff Act of 1930, as amended ("the Act"). The period of investigation is July 1, 2012, through June 30, 2013. The estimated weighted-average dumping margins of sales at LTFV are listed in the "Preliminary Determination" section of this notice. Interested Parties are invited to comment on this preliminary determination. The final determination

[7] *See* 19 CFR 351.310(c).

[8] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

[9] *See* Letter to the Secretary of Commerce from FerroVen "Request for Extension of Final Determination" January 14, 2014.

will be issued not later than 75 days after publication of this preliminary determination in the **Federal Register**.

DATES: *Effective Date:* March 11, 2014.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION: On August 8, 2013, the Department initiated the antidumping duty investigation on ferrosilicon from Russia.[1]

Scope of the Investigation

The merchandise covered by this investigation is all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes. Ferrosilicon is a ferroalloy containing by weight four percent or more iron, more than eight percent but not more than 96 percent silicon, three percent or less phosphorus, 30 percent or less manganese, less than three percent magnesium, and 10 percent or less any other element. The merchandise covered also includes product described as slag, if the product meets these specifications.

Ferrosilicon is currently classified under U.S. Harmonized Tariff Schedule ("HTSUS") subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Tolling of Deadlines for Preliminary Determination

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[2] Therefore, all deadlines in this investigation have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.[3] The tolled deadline for the preliminary determination of this investigation was January 13, 2014.

Postponement of the Preliminary Determination

Based on a timely request from Petitioners,[4] on December 23, 2013, the Department postponed the deadline for the preliminary determination by 50 days to March 4, 2014, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).[5]

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. Constructed export prices have been calculated in accordance with section 772 of the Act. Normal value has been calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum.[6] The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). IA ACCESS is available to registered users at *https://iaaccess.trade.gov*, and is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/*. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Producer or exporter	Weighted-average margin (percent)
RFA International LP[7] ..	0.00

Consistent with section 733(d)(1)(A) of the Act, the Department has not calculated a weighted-average dumping margin for all other producers or exporters because it has not made an affirmative preliminary determination of sales at less than fair value.

Suspension of Liquidation

Because this preliminary determination is negative, we are not directing U.S. Customs and Border Protection to suspend liquidation of entries of ferrosilicon from Russia.

Disclosure and Public Comment

The Department will disclose the calculations performed to parties in this investigation within five days of the date of publication of this notice, consistent with 19 CFR 351.224(b).

Interested parties are invited to comment on the preliminary determination of this investigation. Case briefs may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding.[8] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. An electronically filed document must be received successfully in its entirety in IA ACCESS by 5 p.m. Eastern Standard

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[1] *See Ferrosilicon From the Russian Federation and Venezuela: Initiation of Antidumping Duty Investigations*, 78 FR 49471 (August 14, 2013).

[2] *See* "Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, 'Deadlines Affected by the Shutdown of the Federal Government,'" dated October 18, 2013.

[3] *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

[4] Petitioners include the following: Globe Specialty Metals, Inc.; CC Metals and Alloys, LLC; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

[5] *See Ferrosilicon From the Russion Federation and Venezuelo: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 78 FR 77423 (December 23, 2013).

[6] *See* "Decision Memorandum for Preliminary Determination of the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation ('Russia')," from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrently with this determination and hereby adopted by this notice ("Preliminary Decision Memorandum").

[7] We preliminarily determine that RFA International LP, Chelyabinsk Electrometallurgical Integrated Plant Joint Stock Company, and JSC Kuznetskie Ferrosplavy comprise a single entity. *See* Preliminary Decision Memorandum. Therefore, the weighted-average margin applies to the single entity comprised of these three companies.

[8] *See* 19 CFR 351.309(c).

[9] *See* 19 CFR 351.309(d).

Time within 30 days after the date of publication of this notice.[10] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department will inform parties of the scheduled time and date for the hearing, which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission ("ITC") Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary negative determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: March 4, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum.

1. Background
2. Scope of the Investigation
3. Scope Comments
4. Respondent Selection
5. Voluntary Respondent Selection
6. Affiliation and Single Entity Determination
7. Determination of Comparison Method
   a. Differential Pricing Analysis
   b. Results of the Differential Pricing Analysis
8. Discussion of Methodology
   a. Fair Value Comparisons
   b. Product Comparisons
   c. Date of Sale
   d. Constructed Export Price
9. Normal Value
   a. Comparison Market Viability
   b. Affiliated Party Transactions and Arm's Length Test
   c. Level of Trade
   d. Cost of Production
   e. Calculation of COP
   f. Test of Comparison Market Sales Prices
   g. Results of COP Test
   h. Calculation of Normal Value based on Comparison Market Prices
10. Currency Conversion
11. Verification

[10] *See* 19 CFR 351.310(c).

[FR Doc. 2014–05251 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Public Meeting—Intersection of Cloud Computing and Mobility Forum and Workshop

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public forum and workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the Intersection of Cloud and Mobility Forum and Workshop to be held on Tuesday, March 25, Wednesday, March 26, and Thursday, March 27, 2014. The format is a three-day forum with breakout sessions held each day. The meeting was originally scheduled for October 1–3, 2013 and was rescheduled as a result of the government shutdown due to a lapse in appropriations. The NIST Intersection of Cloud and Mobility Forum and Workshop will bring together leaders and innovators from industry, academia and government in an interactive format that combines keynote presentations, panel discussions, interactive breakout sessions, and open discussion. The forum and workshop are open to the general public. NIST invites organizations to display posters and participate as exhibitors as described in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The Intersection of Cloud and Mobility Forum and Workshop will be held 9:00 a.m.–5:00 p.m. Eastern Time (ET) on Tuesday, March 25, 9:00 a.m.–5:00 p.m. e.t. on Wednesday, March 26, and 9:00 a.m.–12:30 p.m. e.t. on Thursday, March 27, 2014. Registration closes at 5:00 p.m. e.t. on Monday, March 17, 2014.

ADDRESSES: To register, go to: *http://www.nist.gov/itl/cloud/intersection-of-cloud-and-mobility.cfm.* The event will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899 in the Red Auditorium of the Administration Building (Building 101). Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below.

To request an exhibit table or a poster display, contact Tara Brown at *tara.brown@nist.gov* or 301–975–4178.

FOR FURTHER INFORMATION CONTACT: Michaela Iorga by email at *michaela.iorga@nist.gov* or by phone at (301) 975–8431. Additional information may be found at: *http://www.nist.gov/itl/cloud/intersection-of-cloud-and-mobility.cfm.*

SUPPLEMENTARY INFORMATION: NIST hosted six prior Cloud Computing Forum & Workshop events in May 2010, November 2010, April 2011, November 2011, June 2012 and January 2013. The series of workshops was organized in response to the request of the U.S. Chief Information Officer that NIST lead federal efforts on standards for data portability, cloud interoperability, and security.[1] The workshops' goals are to engage with industry to accelerate the development of cloud standards for interoperability, portability, and security, discuss the Federal Government's experience with cloud computing, report on the status of the NIST Cloud Computing efforts, launch and report progress on the NIST-led initiative to collaboratively develop a U.S. Government (USG) Cloud Computing Technology Roadmap among multiple federal and industrial stakeholders, and to advance the dialogue among all of these stakeholders. This workshop in the series has been expanded to focus on the emerging trend of Mobility in the context of its convergence with and complementary relationship to Cloud Computing.

On the first day, the workshop presenters will focus on the future of Cloud Computing, Mobility and where the two intersect, in addition to providing a status update on NIST efforts to develop or support development of security, interoperability and portability open standards, cloud service metrics and service level agreement guidance. On the second day, the workshop will focus on current Cloud Computing and Mobility challenges and how these challenges could be alleviated or exacerbated at the intersection of Cloud and Mobility. On the third day, the workshop will focus on the path forward to achieve full integration and harmonization of Cloud Computing and Mobility and to explore possibilities for harmonizing the two in ways that unleash their complementing power and augment their inter-correlation to promote progress and prosperity.

[1] Office of Management and Budget, U.S. Chief Information Officer, *Federal Cloud Computing Strategy*, Feb. 8, 2011. Online: *https://cio.gov/wp-content/uploads/downloads/2012/09/Federal-Cloud-Computing-Strategy.pdf.*

NIST invites members of the public, especially Cloud Computing and Mobility community stakeholders, to participate on Tuesday, March 25, and Wednesday, March 26, 2014, as an exhibitor. Exhibit space will be available for a total of 25 academic, industry, and standards developing organizations to exhibit their respective Cloud Computing or Mobility work at an exhibit table or with a poster. The first 25 organizations requesting an exhibit table or a poster display related to Cloud Computing & Mobility will be accepted for both days. Interested organizations should contact Tara Brown, email: *tara.brown@nist.gov* or (301) 975–4178. Requests for an exhibit table or posters will be granted on a first-come, first-serve basis. Responses must be submitted by an authorized representative of the organization. Logistics information will be provided to accepted exhibitors. NIST will provide the poster and exhibit location space and one work-table, free of charge. Exhibitors are responsible for the cost of the poster or exhibit, including staffing and materials. NIST reserves the right to exercise its judgment in the placement of posters and exhibits. General building security is supplied; however, exhibitors are responsible for transporting and securing exhibit equipment and materials. NIST is not liable with regard to damage or loss of equipment used in the exhibit table or poster.

The workshop is open to the general public; however, those wishing to attend must register at *http://www.nist.gov/itl/cloud/intersection-of-cloud-and-mobility.cfm* by 5:00 p.m. ET on Monday, March 17, 2014. All visitors to the NIST site are required to pre-register to be admitted and have appropriate government-issued photo ID to gain entry to NIST.

Dated: February 27, 2014.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2014–05215 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD153

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 16 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, United States Waters

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Intent (NOI) to prepare a supplemental environmental impact statement (SEIS); request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the Gulf of Mexico Fishery Management Council (Council) intends to prepare an SEIS to describe and analyze a range of alternatives for management actions to be included in Amendment 16 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) (Amendment 16). These actions will consider the annual catch limit (ACL), accountability measures (AMs), and continued use of the quota for royal red shrimp. The purpose of this NOI is to solicit public comments on the scope of issues to be addressed in the SEIS.

DATES: Written comments on the scope of issues to be addressed in the SEIS must be received by NMFS by April 10, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2014–0030, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0030,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, Southeast Regional Office, telephone: 727–824–5305; or email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: On January 30, 2012, NMFS implemented regulations developed through the Generic ACL and AM Amendment (Generic Amendment) to multiple fishery management plans, including the Shrimp FMP (76 FR 82044, December 29, 2011). That amendment included actions to establish the commercial ACL and AM for royal red shrimp. However, the "no action" alternatives and discussions in the Generic Amendment were incorrect in stating that there were currently no management restrictions or AMs for royal red shrimp, when in fact a quota and in-season quota closure were already in the regulations. Because the Council was not fully informed about the existing regulations that would be replaced by their preferred alternatives in the Generic Amendment, NMFS and the Council intend to reconsider the commercial ACL and AM for royal red shrimp.

NMFS, in collaboration with the Council, will develop an SEIS for Amendment 16 to describe and analyze alternatives to: (1) Set the commercial ACL for royal red shrimp and determine if the use of a commercial quota should continue, and (2) choose a commercial AM for royal red shrimp. The alternatives will include an appropriate "no action" alternative regarding each action.

In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Council, has identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the SEIS. The EIS for the Generic Amendment was originally scoped in 2009 and can be viewed at: *http://www.gulfcouncil.org/docs/amendments/Final%20Generic%20ACL_AM_Amendment-September%209%202011%20v.pdf.* A guide to Amendment 16 can be viewed at: *http://gulfcouncil.org/docs/Public%20Hearing*

%20Guides/Shrimp%20Amendment%2016%20Guide.pdf.

Comments on the scope of the SEIS may be submitted in writing to NMFS (see **ADDRESSES**) during the 30-day scoping period. During the development of Amendment 16, the Council will accept written comments on the action, and oral comments may be made during the public testimony portion of any Council meeting

After the draft SEIS associated with Amendment 16 is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the draft SEIS for public comment in the **Federal Register**. The draft SEIS will have a 45-day public comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

NMFS and the Council will consider public comments received on the draft SEIS in developing the final SEIS and before adopting final management measures for the amendment. NMFS will submit the consolidated final amendment and supporting SEIS to the Secretary of Commerce (Secretary) for review as required by the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS will announce, through a notification in the **Federal Register**, the availability of the final amendment for public review during the Department of Commerce Secretarial review period, and will consider all public comments. During Secretarial review, NMFS will also file the final SEIS with the EPA, and the EPA will publish a notice of availability for the final SEIS in the **Federal Register**. This public comment period is expected to be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the amendment.

NMFS will announce, through a document published in the **Federal Register**, all public comment periods on the final amendment, its proposed implementing regulations, and the availability of its associated final SEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final amendment, the proposed regulations, or the final SEIS, prior to final agency action.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 5, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–05275 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plan for the Exclusive Economic Zone of Puerto Rico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplemental Notice of Intent (NOI) to prepare a draft environmental impact statement (DEIS); scoping meetings; request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the Caribbean Fishery Management Council (Council), intends to prepare a DEIS to describe and analyze a range of management alternatives for management actions to be considered when developing and establishing a Comprehensive Fishery Management Plan (FMP) for the exclusive economic zone (EEZ) of Puerto Rico. The purpose of this Supplemental NOI is to inform the public of upcoming opportunities to provide comments on the actions to be addressed in the DEIS, as specified in this notice.

DATES: Written comments on the scope of issues to be addressed in the DEIS must be received by NMFS by April 10, 2014. A second round of scoping meetings will be held in April 2014. For specific dates and times, see **SUPPLEMENTARY INFORMATION**, under the heading, "Scoping Meetings".

ADDRESSES: You may submit comments on the DEIS, identified by "NOAA–NMFS–2013–0093", by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0093,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Miguel Lugo, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or to the Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the scoping document may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/island_based/index.html.*

The scoping meetings will be held in Puerto Rico and in the U.S. Virgin Islands. For specific locations, see **SUPPLEMENTARY INFORMATION**, under the heading, "Scoping Meetings".

FOR FURTHER INFORMATION CONTACT: Miguel Lugo, phone 727–824–5305, email *Miguel.Lugo@noaa.gov;* or Graciela García-Moliner, phone 787–766–5927, email *Graciela.Garcia-Moliner@noaa.gov.*

SUPPLEMENTARY INFORMATION: Currently, the Council manages Federal fisheries in the U.S. Caribbean under four species-based FMPs: The Spiny Lobster FMP of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP), the Reef Fish FMP of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP), the Corals and Reef Associated Plants and Invertebrates FMP of Puerto Rico and the U.S. Virgin Islands (Coral FMP), and the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (Queen Conch FMP). The fishers, fishing community representatives, and the local governments of Puerto Rico and the U.S. Virgin Islands (USVI) have frequently requested the Council consider the differences between the islands or island groups when addressing fisheries management in the U.S. Caribbean to recognize the unique attributes of each U.S. Caribbean island. By developing island-based FMPs, NMFS and the Council would better account for differences among the U.S. Caribbean islands with respect to culture, markets, gear, seafood

preferences, and the ecological impacts that result from these differences.

At its 145th meeting, held on March 26–27, 2013, the Council decided to transition from species-based fisheries management to island-based fisheries management. If approved, a comprehensive FMP for fisheries management off Puerto Rico, in conjunction with similar comprehensive FMPs for fisheries management off St. Croix and off St. Thomas/St. John, would replace the existing species-based FMPs.

Also at its March meeting, the Council voted to hold scoping meetings in July 2013 to receive public feedback on possible actions and alternatives to consider during the development of the Puerto Rico FMP, the St. Croix FMP, and the St. Thomas/St. John FMP. Based on public feedback received at the July scoping meetings, the Council decided at its 148th Meeting, held December 11–12, 2013, to hold a second round of scoping meetings to present a more robust set of actions and alternatives. The Council could develop the comprehensive FMPs without significant changes to current Federal fisheries management. For example, the 2010 Caribbean Annual Catch Limit (ACL) Amendment (76 FR 82404, December 30, 2011) and the 2011 Caribbean ACL Amendment (76 FR 82414, December 30, 2011) established ACLs by island or island group with specific ACLs for the Puerto Rico EEZ. The spatial and species-based attributes of these Puerto Rico ACLs, likely, would not change when developing the new FMP.

However, a re-arrangement from species-based FMPs to island-based FMPs also provides an opportunity for the Council to update management regulations that are outdated or do not reflect the current state of issues in the Puerto Rico EEZ. In the comprehensive Puerto Rico FMP, the Council is considering management measures to modify the composition of the fishery management units (FMUs) by adding or removing species, establishing management reference points for any new species added into the FMUs, and modifying or establishing additional management measures. If regulations are to be changed, additional analyses to assess the impacts to the social, biological, economic, ecological, and administrative environments will be required.

To implement the proposed provisions of this new FMP, the Council will develop a DEIS for the comprehensive Puerto Rico FMP that describes and analyzes the proposed management alternatives. The new FMP will provide the best available scientific information regarding the management of Puerto Rico fisheries, within the context of Federal fisheries management in the U.S. Caribbean. Those alternatives will include, but are not limited to, a "no action" alternative regarding the continuation of species-based Federal fishery management in Puerto Rico, as well as alternatives to revise the management of U.S. Caribbean fisheries when developing the comprehensive Puerto Rico FMP. In addition, there will be alternatives to modify the current FMUs including, but not limited to, the "no action" alternative. Other actions could be included in the DEIS in response to public feedback during the scoping process.

In accordance with NOAA's Administrative Order NAO 216–6, Section 5.02(c), the Council and NMFS have identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS.

After the DEIS associated with the development of the Comprehensive Puerto Rico FMP is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the FMP to NMFS for Secretarial review, approval, and implementation.

NMFS will announce in the **Federal Register** the availability of the FMP for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FEIS with the EPA for a final 30-day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the FMP.

NMFS will announce in the **Federal Register**, all public comment periods on the FMP, its proposed implementing regulations, and the associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the FMP, the proposed regulations, or the FEIS, prior to final agency action.

Scoping Meetings

All scoping meetings are scheduled for the week of April 7 and 14, 2014 (start times and locations are specified below). Participants at the scoping meetings may comment on any of the island-based FMPs (the Puerto Rico FMP, the St. Croix FMP, and the St. Thomas/St. John FMP) during any of the scoping meetings. The meetings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to the Council (see **ADDRESSES**).

Supplemental Island-Based Scoping Meetings in Puerto Rico

- April 7, 2014, 7 p.m. to 10 p.m.—at the Parador and Restaurant El Buen Café, #381, Rd. #2, Hatillo, Puerto Rico.
- April 8, 2014, 7 p.m. to 10 p.m.—at the Mayaguez Holiday Inn, 2701 Hostos Avenue, Mayaguez, Puerto Rico.
- April 9, 2014, 7 p.m. to 10 p.m.—at the Asociación de Pescadores Unidos de Playa Húcares, Carr. #3, Km. 65.9, Naguabo, Puerto Rico.
- April 10, 2014, 7 p.m. to 10 p.m.—at the DoubleTree by Hilton San Juan, De Diego #105 Avenue, San Juan, Puerto Rico.
- April 14, 2014, 7 p.m. to 10 p.m.—at the Holiday Inn Ponce & Tropical Casino, 3315 Ponce By Pass, Ponce, Puerto Rico.

Supplemental Island-Based Scoping Meetings in the USVI

- April 7, 2014, 7 p.m. to 10 p.m.—at the Windward Passage Hotel, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.
- April 8, 2014, 7 p.m. to 10 p.m.—at the Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, U.S. Virgin Islands.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 4, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–05157 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD039

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seismic Survey in Cook Inlet, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Apache Alaska Corporation (Apache) to take marine mammals, by harassment, incidental to a proposed 3D seismic survey in Cook Inlet, Alaska, between March 4, 2014, and December 31, 2014.

DATES: Effective March 4, 2014, through December 31, 2014.

ADDRESSES: Electronic copies of the IHA, application, and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On July 18, 2013, NMFS received an application from Apache for the taking of marine mammals incidental to a 3D seismic survey program. Based on comments and questions from NMFS, the application was revised. Apache submitted a new application on November 11, 2013. The application was determined adequate and complete on November 20, 2013. On December 31, 2013, NMFS published a notice in the **Federal Register** of our proposal to issue an IHA with preliminary determinations and explained the basis for the proposal and preliminary determinations (78 FR 80386). The filing of the notice initiated a 30-day public comment period. The comments and our responses are discussed later in this document.

Apache proposes to conduct a 3D seismic survey in Cook Inlet, Alaska. The activity would occur for approximately 8–9 months between March 4 and December 31, 2014. In-water airguns will only be active for approximately 2–3 hours during each of the slack tide periods. There are approximately four slack tide periods in a 24-hour period; therefore, airgun operations will be active during approximately 8–12 hours per day, if weather conditions allow. The following specific aspects of the activities are likely to result in the take of marine mammals: seismic airgun operations. Take, by Level B Harassment only, of individuals of five species/stocks is anticipated to result from the specified activity.

This is the third request NMFS has received from Apache for takes of marine mammals incidental to conducting a seismic survey in Cook Inlet. On April 30, 2012, NMFS issued a 1-year IHA to Apache for their first season of seismic acquisition in Cook Inlet (77 FR 27720). NMFS issued a second 1-year IHA to Apache in February 2013 (78 FR 12720, February 25, 2013). That IHA expired on March 1, 2014. Except for the location and the size of the survey area, the activities authorized under this third IHA are essentially the same as those conducted during the first season. No seismic survey operations were conducted under the second IHA.

Description of the Specified Activity

Overview

Apache proposes to conduct a 3D seismic survey in Cook Inlet, Alaska, in an area that encompasses approximately 4,238 km^2 (1,636 mi^2) of intertidal and offshore areas (see Figure 2 in Apache's application). Vessels will lay and retrieve nodal sensors on the sea floor in periods of low current, or, in the case of the intertidal area, during high tide over a 24-hour period. Apache will utilize two synchronized vessels. Each source vessel will be equipped with compressors and 2,400 cubic inch (in^3) airgun arrays. Additionally, one of the source vessels will be equipped with a 440 in^3 shallow water source array, which can be deployed at high tide in the intertidal area in less than 1.8 m (6 ft) of water. The two source vessels do not fire the airguns simultaneously; rather, each vessel fires a shot every 24 seconds, leaving 12 seconds between shots.

The operation will utilize two source vessels, three cable/nodal deployment and retrieval operations vessels, a mitigation/monitoring vessel, a node re-charging and housing vessel, and two small vessels for personnel transport and node support in the extremely shallow waters in the intertidal area. Water depths for the program will range from 0–128 m (0–420 ft).

Apache has acquired over 800,000 acres of oil and gas leases in Cook Inlet since 2010 with the primary objective to explore for and develop oil and gas resources in Cook Inlet. Seismic surveys are designed to collect bathymetric and sub-seafloor data that allow the

evaluation of potential shallow faults, gas zones, and archeological features at prospective exploration drilling locations. In the spring of 2011, Apache conducted a seismic test program to evaluate the feasibility of using new nodal (no cables) technology seismic recording equipment for operations in Cook Inlet. This test program found and provided important input to assist in finalizing the design of the 3D seismic program in Cook Inlet (the nodal technology was determined to be feasible). Apache began seismic onshore acquisition on the west side of Cook Inlet in September 2011 and offshore acquisition in May 2012 under an IHA issued by NMFS for April 30, 2012 through April 30, 2013 (77 FR 27720, May 11, 2012) (see Figure 1 in Apache's application).

Dates and Duration

Apache proposes to acquire offshore/transition zone operations for approximately 8 to 9 months in offshore areas in open water periods from March 4 through December 31, 2014. During each 24-hour period, seismic support activities may be conducted throughout the entire period; however, in-water airguns will only be active for approximately 2–3 hours during each of the slack tide periods. There are approximately four slack tide periods in a 24-hour period; therefore, airgun operations will be active during approximately 8–12 hours per day, if weather conditions allow. Two airgun source vessels will work concurrently on the spread, acquiring source lines approximately 12 km (7.5 mi) in length. Apache anticipates that a crew can acquire approximately 6.2 km^2 (2.4 mi^2) per day, assuming a crew can work 8–12 hours per day. Thus, the actual survey duration will take approximately 160 days over the course of 8 to 9 months. The vessels will be mobilized out of Homer or Anchorage with resupply runs occurring multiple times per week out of Homer, Anchorage, or Nikiski.

Specified Geographic Region

Each phase of the Apache program would encounter land, intertidal transition zone, and marine environments in Cook Inlet, Alaska. However, only the portions occurring in the intertidal zone and marine environments have the potential to take marine mammals. The land-based portion of the program would not result in underwater sound levels that would rise to the level of a marine mammal take.

The proposed location of Apache's acquisition plan has been divided into areas denoted as Zone 1 and Zone 2 (see Figure 2 in Apache's application). Zone 1 is located in mid-Cook Inlet and extends on the east coast from approximately 10 km (6.2 mi) south of Point Possession to 25 km (15.5 mi) north of the East Foreland. Zone 1 only reaches into mid-channel and parallels the western shoreline from the Beluga River south to Bertha Bay. Zone 2 begins at the southern edge of Zone 1 (25 km [15.5 mi] north of the East Foreland) on both the east and west coasts and extends down to approximately Harriet Point on the west coast and to an area about 12 km (7.5 mi) north of Homer. Zones 1 and 2 together encompass approximately 4,238 km^2 (1,636 mi^2) of intertidal and offshore areas. Although Apache would only operate in a portion of this entire area between March 4 and December 31, 2014, Apache requested to operate in this entire region in order to allow for operational flexibility. There are numerous factors that influence the survey areas, including the geology of the Cook Inlet area, other permitting restrictions (i.e., commercial fishing, Alaska Department of Fish and Game refuges), seismic imaging of leases held by other entities with whom Apache has agreements (e.g., data sharing), overlap of sources and receivers to obtain the necessary seismic imaging data, and general operational restrictions (ice, weather, environmental conditions, marine life activity, etc.). Water depths for the program will range from 0–128 m (0–420 ft).

Detailed Description of Activities

The Notice of Proposed IHA (78 FR 80386, December 31, 2013) contains a full detailed description of the 3D seismic survey, including the recording system, sensor positioning, and seismic source. That information has not changed and is therefore not repeated here.

Comments and Responses

A Notice of Proposed IHA was published in the **Federal Register** on December 31, 2013 (78 FR 80386) for public comment. During the 30-day public comment period, NMFS received nine comment letters from the following: the Natural Resources Defense Council (NRDC); the Marine Mammal Commission (MMC); the Resource Development Council; Alaska Oil and Gas Association; the Alaska Big Village Network, Center for Water Advocacy, the Chickaloon Village Traditional Council, and Alaska Inter-Tribal Council (hereafter referred to as "AITC"); Apache; and three private citizens.

NRDC submitted several journal articles and documents as attachments to their comment letter. NMFS acknowledges receipt of these articles and documents but does not intend to address each one specifically in the responses to comments. All of the public comment letters received on the Notice of Proposed IHA (78 FR 80386, December 31, 2013) are available on the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following is a summary of the public comments and NMFS' responses.

Comment 1: The three private citizen letters requested that we deny issuance of the IHA. One letter requested denial because "we still do not know how much harm their proposed activity will create." The other citizens requested denial because marine mammals would be killed as a result of this survey.

Response: Extensive analysis of the proposed 3D seismic survey was conducted in accordance with the MMPA, Endangered Species Act (ESA), and National Environmental Policy Act (NEPA). Pursuant to those statutes, we analyzed the impacts to marine mammals (including those listed as threatened or endangered under the ESA), their habitat (including critical habitat designated under the ESA), and to the availability of marine mammals for taking for subsistence uses. The MMPA analyses revealed that the activities would have a negligible impact on affected marine mammal species or stocks and would not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. The ESA analysis concluded that the activities likely would not jeopardize the continued existence of ESA-listed species or destroy or adversely modify designated critical habitat. The NEPA analysis concluded that there would not be a significant impact on the human environment. Moreover, this activity is not expected to result in the death of any marine mammal species, and no such take is authorized. Mitigation and monitoring measures (as described later in this document) are required to reduce this potential even further.

Comment 2: The Resource Development Council and the Alaska Oil and Gas Association support issuance of this IHA in a timely manner and urge NMFS to recognize the benefits of seismic surveys and subsequent development of energy resources to Alaskans and the local economy.

Response: After careful evaluation of all comments and the data and information available regarding potential impacts to marine mammals and their habitat and to the availability

of marine mammals for subsistence uses, NMFS has issued the final authorization to Apache to take marine mammals incidental to conducting a 3D seismic survey program in Cook Inlet for the period March 4 through December 31, 2014.

Comment 3: The MMC recommends that NMFS defer issuance of the proposed IHA until such time as NMFS can, with reasonable confidence, support a conclusion that the proposed activities would affect no more than a small number of Cook Inlet beluga whales and have no more than a negligible impact on the population. The MMC recommends that NMFS defer issuance until we have better information on the cause or causes of ongoing decline of the population and a reasonable basis for determining that authorizing additional takes would not contribute to or exacerbate that decline. The MMC continues to believe that any activity that may contribute to or that may worsen the observed decline should not be viewed as having a negligible impact on the population. The NRDC states that NMFS failed to meet both the "small numbers" and "negligible impact" standards.

Response: In accordance with our implementing regulations at 50 CFR 216.104(c), we use the best available scientific evidence to determine whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. Based on the scientific evidence available, NMFS determined that the impacts of the proposed 3D seismic survey program, which are primarily acoustic in nature, would meet these standards. Moreover, Apache proposed and NMFS has required in the IHA a rigorous mitigation plan to reduce impacts to Cook Inlet beluga whales and other marine mammals to the lowest level practicable, including measures to power down or shutdown airguns if any beluga whale is observed approaching or within the Level B harassment zone and restricting activities within a 10 mi (16 km) radius of the Susitna Delta from April 15 through October 15, which is an important area for beluga feeding and calving in the spring and summer months.

Our analysis indicates that issuance of this IHA will not contribute to or worsen the observed decline of the Cook Inlet beluga whale population. Additionally, the February 14, 2013, ESA Biological Opinion determined that the issuance of an IHA is not likely to jeopardize the continued existence of the Cook Inlet beluga whales or the western distinct population segment of Steller sea lions or destroy or adversely modify Cook Inlet beluga whale critical habitat. The Biological Opinion also outlined Terms and Conditions and Reasonable and Prudent Measures to reduce impacts, which have been incorporated into the IHA. Therefore, based on the analysis of potential effects, the parameters of the seismic survey, and the rigorous mitigation and monitoring program, NMFS determined that the activity would have a negligible impact on the population.

Moreover, the seismic survey would take only small numbers of marine mammals relative to their population sizes. The number of animals likely to be taken for harbor porpoises, killer whales, harbor seals, and Steller sea lions represent less than 2% of the stock or population sizes. As described in the proposed IHA **Federal Register** notice, NMFS used a method that incorporates density of marine mammals overlaid with the anticipated ensonified area to calculate an estimated number of takes for belugas, which was estimated to be less than 10% of the stock abundance, which NMFS considers small. In addition to this quantitative evaluation, NMFS has also considered qualitative factors that further support the "small numbers" determination, including: (1) The seasonal distribution and habitat use patterns of Cook Inlet beluga whales, which suggest that for much of the time only a small portion of the population would be accessible to impacts from Apache's activity, as most animals are concentrated in upper Cook Inlet; (2) the mitigation requirements, which provide spatio-temporal limitations that avoid impacts to large numbers of animals feeding and calving in the Susitna Delta and limit exposures to sound levels associated with Level B harassment; and (3) monitoring results from previous surveys conducted by Apache in the same general vicinity, which indicated that no Cook Inlet beluga whales were sighted within the Level B harassment zone. Based on all of this information, NMFS determined that the number of beluga whales likely to be taken is small. See response to *Comment 4* and our small numbers analysis later in this document for more information about the small numbers determination for beluga whales and the other marine mammal species.

Comment 4: The MMC states that it remains unclear how NMFS is defining both small numbers and negligible impact in this situation and more generally. Reviewing courts have ruled that "small numbers" and "negligible impact" are not synonymous and the former cannot be defined on the basis of the latter—that is, they are separate standards. Defining the term "small numbers" for application to multiple species or stocks has been a challenge. An absolute definition (i.e., a set number of animals) might make sense in some cases but would not in others. A relative definition (e.g., a percentage) also might be appropriate in some cases but not in others. Because the Cook Inlet beluga population has been significantly reduced and is relatively small (about 300 individuals), defining small numbers as a percentage of the population's abundance would seem most appropriate in this instance. The NRDC commented that NMFS provides inadequate justification for these two standards.

Response: As both this notice and the proposed IHA **Federal Register** notice (78 FR 80386, December 31, 2013) show, NMFS considers "small numbers" and "negligible impact" as separate standards and conducts its analysis of each requirement separately. When making the negligible impact determination, NMFS assesses whether or not the activity is likely to affect annual rates of recruitment or survival of the affected species or stock. In addition to the number of estimated Level B harassment takes, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration corridor, etc.), as well as the number and nature of estimated Level A harassment takes and the number of estimated serious injuries or mortalities. We also consider the status of the species or stock (threatened, endangered, depleted, etc.) and how the mitigation measures are expected to reduce the number or severity of takes. As noted previously, Apache proposed and NMFS has required a rigorous set of mitigation measures to not only reduce and/or avoid Level A harassment takes but also to reduce and/or avoid Level B (behavioral) harassment takes.

In both the proposed IHA notice and this document, we have made a separate "small numbers" finding. As recommended by the MMC, we have based that finding on the percentage of the stock anticipated to be taken. The amount of Cook Inlet beluga whale takes authorized represents 9.6% of the population. This percentage is consistent with previous authorizations issued by NMFS and does not violate the "small numbers" requirement.

Comment 5: The MMC recommends that NMFS work with the U.S. Fish and Wildlife Service (USFWS) and the MMC

to develop a policy that sets forth clear criteria and/or thresholds for determining what constitutes "small numbers" and "negligible impact" for the purpose of authorizing incidental takes of marine mammals. The MMC understands that NMFS has been working on developing a policy and would welcome an opportunity to discuss this policy further before it is finalized.

Response: NMFS is in the process of developing both a clearer policy to outline the criteria for determining what constitutes "small numbers" and an improved analytical framework for determining whether an activity will have a "negligible impact" for the purpose of authorizing takes of marine mammals. We fully intend to engage the MMC in these processes at the appropriate time, and we will coordinate with the USFWS where needed.

Comment 6: The NRDC states: "As NMFS' regulations make clear, the agency must modify, withdraw, or suspend an IHA if the authorized taking, "either individually or in combination with other authorizations," is having a greater than negligible impact on the species or population or an unmitigable adverse impact on subsistence use. 50 CFR 216.107(f)(2). This year, in addition to Apache's, NMFS has received IHA applications from two other companies, Furie and SAExploration, that plan to conduct seismic exploration in Cook Inlet and, according to documents published by the Alaska Department of Natural Resources, largely within the same general areas identified by Apache." The NRDC, AITC, and the MMC both note that NMFS must address the cumulative effects of activities in Cook Inlet on Cook Inlet beluga whales and whether the cumulative impacts of all the activities are having "either individually or in combination" a greater than negligible impact on marine mammals.

Response: The section of the implementing regulations cited by the NRDC relates to the level of take and degree of impacts known to have occurred or be occurring after issuance of the IHA not to the standards and protocols that must be followed to issue the authorization initially. Neither the MMPA nor NMFS' implementing regulations specify how to consider other activities and their impacts on the same populations when conducting a negligible impact analysis. However, consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into the negligible impact analysis via their impacts on the environmental baseline (e.g., as reflected in the density/distribution and status of the species, population size and growth rate, and ambient noise).

In addition, cumulative effects were addressed in the EA and Biological Opinion prepared for this action. These documents, as well as the Alaska Marine Stock Assessments and the most recent abundance estimate for Cook Inlet beluga whales (Allen and Angliss, 2013), are part of NMFS' Administrative Record for this action, and provided the decision maker with information regarding other activities in the action area that affect marine mammals, an analysis of cumulative impacts, and other information relevant to the determination made under the MMPA.

Comment 7: The MMC states that NMFS should explain why it believes marine mammals that avoid an area in response to a sound source, even if their exposure is below the assumed disturbance threshold, should not be considered to have been taken under the MMPA's definition of Level B harassment (16 U.S.C. 1362(18)(A)(ii)).

Response: When estimating the numbers of animals that may be "taken" by Level B harassment by acoustic sources, NMFS has identified specific sound thresholds to make that assessment. Based on available scientific data and information some individuals may react to a degree that is considered a take by harassment while others may not. Additionally, some individuals may react before entering the relevant sound isopleth, and, again, others may not. Avoidance to the degree that would be considered a take under the MMPA has been incorporated into our threshold and our analysis.

Comment 8: The MMC notes that in the 2012 monitoring reports, Apache reported four instances in which gray whales were observed approaching the disturbance zone, resulting in shutdown of operations. To ensure that unauthorized takes of gray whales do not occur in 2014, the MMC recommends that NMFS advise Apache to request the authorization of incidental takes of gray whales associated with its proposed activities.

Response: Distribution of gray whales in upper Cook Inlet has not been well understood, and Apache's monitoring reports have provided new information. However, occurrence of gray whales is still not expected to be common in the seismic survey area. The IHA contains a measure that states if any marine mammal species are encountered during seismic activities that are not listed in the IHA for authorized taking and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms), then Apache must alter speed or course, power down, or shut-down the sound source to avoid take. Take, even by Level B harassment, of any species not specifically listed in the IHA is prohibited. Therefore, Apache will continue to implement mitigation measures to avoid take of gray whales. Based on the low level of occurrence, the ability to implement mitigation measures, and the high likelihood of detectability of gray whales during monitoring, NMFS determined that take of gray whales is not needed in this IHA. However, Apache intends to continue their 3D seismic survey program and has submitted an application requesting 5-year regulations and a Letter of Authorization. We will advise Apache to consider including take of gray whales in that longer-term request.

Comment 9: The NRDC and AITC state that NMFS failed to properly estimate take in the proposed IHA. The NRDC states that NMFS failed to account for survey duration in the estimation of beluga whale takes and that NMFS based beluga takes using a predictive habitat density model (Goetz *et al.*, 2012) that is based on data from summer months and confined to summer distribution when belugas are generally concentrated in the Upper Inlet, even though activity could occur year round.

Response: The numerical estimation of take for beluga whales did not consider survey duration in the calculation. However, the method of using daily footprints (as was done for the four other marine mammal species for which take is authorized), while offering a good picture of instances of take, overestimates the numbers of individual animals likely to be taken because the calculation assumes a 100% turnover of animals every day, which is unlikely. This overestimation of individuals would be especially exacerbated if this method were used for Cook Inlet beluga whales because it is well known from data that the majority of the population occurs in the upper Inlet (around the Susitna, Little Susitna, and Beluga Rivers) from late April/early May until late September/early October.

Moreover, the model (or other numerical methods for estimating take) does not take into consideration the rigorous mitigation protocols that will be implemented by Apache to reduce the number of actual Level B harassment takes of Cook Inlet beluga whales. As mentioned previously, the IHA contains a condition restricting Apache's airgun operations within 10

mi (16 km) of the mean higher high water line of the Susitna Delta from April 15 through October 15. During this time, a significant portion of the Cook Inlet beluga whale population occurs in this area for feeding and calving. This setback distance includes the entire 160 dB radius of 5.9 mi (9.5 km) predicted for the full airgun array plus an additional 4.1 mi (6.5 km) of buffer, thus reducing the number of animals that may be exposed to Level B harassment thresholds. Apache is also required to shut down the airguns if any beluga whale is sighted approaching or entering the Level B harassment zone to avoid take. Additionally, Apache will fly daily aerial surveys, safety and weather permitting, to monitor for the presence of large groups of beluga whales. Observations from these surveys will provide the basis for real-time mitigation (i.e., airgun power down, shutdown, and ramp up), and aerial observers will be in radio contact with the seismic operations personnel. The aerial surveys can be used to redirect seismic operations as needed based on presence of large numbers of beluga whales. Lastly, observations from previous Apache monitoring reports did not note sightings of any beluga whales inside the 160 dB threshold. Therefore, NMFS combined use of the National Marine Mammal Laboratory (NMML) model, which we determined to be the best available data upon which to base density estimates, with consideration of all of the mitigation measures required to be implemented to authorize 30 beluga whale takes. This approach is reasonable and does not contradict available science and data of beluga whale distribution and local abundance during the period of operations.

Comment 10: The NRDC states that in the case of marine mammals other than beluga whales, NMFS repeated past errors associated with its use of raw NMML survey data. Errors in the density calculations include the failure to incorporate correction factors for missed marine mammals in the analysis and the failure to fully account for survey duration by multiplying densities (which are calculated on an hourly basis) by the number of survey days but not the number of hours in a day.

Response: Based on a comment from the MMC (see *Comment 11*), NMFS has increased the number of harbor seal takes to match the average density and take estimation. Correction factors for marine mammal surveys, with the exception of beluga whales, are not available for Cook Inlet. The primary purpose and focus of the NMFS aerial surveys in Cook Inlet for the past decade has been to monitor the beluga whale population. Although incidental observations of other marine mammals are noted during these surveys, they are focused on beluga whales. With the exception of the beluga whale, no detailed statistical analysis of Cook Inlet marine mammal survey results has been conducted, and no correction factors have been developed for Cook Inlet marine mammals. The only published Cook Inlet correction factor is for beluga whales. Developing correction factors for other marine mammals would have required different survey data collection and consideration of unavailable data such as Cook Inlet sightability, movement patterns, tidal correlations and detailed statistical analyses. For example, other marine mammal numbers are often rounded to the nearest 10 or 100 during the NMFS aerial survey; resulting in unknown observation bias. Therefore, the data from the NMFS surveys are the best available and take levels are still likely overestimated because of the assumption that there is a 100% turnover rate of marine mammals each day.

Survey duration was appropriately considered in the estimations by multiplying density by area of ensonification by number of survey days. NMFS does not calculate takes on an hourly basis, and, additionally, the multiple hours surveyed within a day are reflected in the area of ensonification, which considers the distance they can move within a day and is therefore larger than what would be covered in one hour. Moreover, Apache will not be using the seismic airguns 24 hours per day, so multiplying by a daily duration may in fact overestimate take for some species. While protected species observers (PSOs) cannot detect every single animal within the Level B harassment zone, the monitoring reports indicate that sightings did not exceed anticipated estimates. Also, Apache was able to successfully implement mitigation measures to avoid Level A harassment takes of these species. The take estimates for species other than beluga whales also assume that Apache will operate in the entire proposed area (all of Zone 1 and all of Zone 2). Because Apache will only operate in a subset of the total area, the take levels are again likely overestimates. Therefore, we determined that appropriate calculations were used to estimate take levels.

Comment 11: The MMC notes that Apache made adjustments to the average and maximum densities for several species in its newest application and that the estimates for harbor seals went up significantly from the previous application. However, no corresponding adjustments were made either to Apache's take request or the number of takes proposed by NMFS for harbor seals. Therefore, to ensure that authorized takes for harbor seals are not exceeded for proposed activities in 2014, the MMC recommends that NMFS authorize, at a minimum, the average estimated number of takes for harbor seals.

Response: Based on the MMC recommendation, NMFS has increased the number of estimated and authorized harbor seal takes from 200 (number included in the proposed IHA notice) to 440 (the average estimated number of harbor seal takes in Apache's application). This changes the percentage of the population potentially taken by Level B harassment from 0.87% to 1.9%. However, the amount of take is still a small number relative to the affected species/stock size. Additionally, the change in the amount of take does not alter the previous analysis for harbor seals, and the takes will have a negligible impact on harbor seals.

Comment 12: The NRDC commented that NMFS underestimated the size of Apache's impact area by: (1) Using an outdated and incorrect threshold for behavioral take; and (2) disregarding the best available evidence on the potential for temporary and permanent threshold shift on mid- and high-frequency cetaceans and on pinnipeds.

Response: The comment that NMFS uses an outdated and incorrect threshold for behavioral takes does not include any specific recommendations. NMFS uses 160 dB (rms) as the exposure level for estimating Level B harassment takes for most species in most cases. This threshold was established for underwater impulse sound sources based on measured avoidance responses observed in whales in the wild. Specifically, the 160 dB threshold was derived from data for mother-calf pairs of migrating gray whales (Malme *et al.*, 1983, 1984) and bowhead whales (Richardson *et al.*, 1985, 1986) responding to seismic airguns (e.g., impulsive sound source). We acknowledge there is more recent information bearing on behavioral reactions to seismic airguns, but those data only illustrate how complex and context-dependent the relationship is between the two. *See* 75 FR 49710, 49716 (August 13, 2010) (IHA for Shell seismic survey in Alaska; response to *comment 9*). Accordingly, it is not a matter of merely replacing the existing threshold with a new one. NOAA is

developing relatively more sophisticated draft guidelines for determining acoustic impacts, including information for determining Level B harassment thresholds. Due to the complexity of the task, the draft guidelines will undergo a rigorous review that includes internal agency review, public notice and comment, and external peer review before any final product is published. In the meantime, and taking into consideration the facts and available science, NMFS determined it is reasonable to use the 160 dB threshold for estimating takes of marine mammals in Cook Inlet by Level B harassment. However, we discuss the science on this issue qualitatively in our analysis of potential effects to marine mammals.

The comment that NMFS disregarded the best available evidence on the potential for temporary and permanent threshold shift on mid- and high-frequency cetaceans and on pinnipeds does not contain any specific recommendations. We acknowledge there is more recent information available bearing on the relevant exposure levels for assessing temporary and permanent hearing impacts. (See NMFS' **Federal Register** notice (78 FR 78822, December 27, 2013) for the draft guidance for assessing the onset of permanent and temporary threshold shift.) Again, NMFS will be issuing new acoustic guidelines, but that process is not complete, so we did not use it to assign new thresholds for calculating take estimates for hearing impacts. However, we did consider the information, and it suggests the current 180 and 190 dB thresholds are appropriate and that they likely overestimate potential for hearing impacts. *See* 75 FR 49710, 49715, 49724 (August 13, 2010) (IHA for Shell seismic survey in Alaska; responses to *comment 8* and *comment 27*). Moreover, the required mitigation is designed to ensure there are no exposures at levels thought to cause hearing impairment, and, for several of the marine mammal species in the project area, mitigation measures are designed to reduce or eliminate exposure to Level B harassment thresholds.

Comment 13: The NRDC commented that the proposed IHA fails to properly evaluate the impacts of stress, the risk of stranding, potential reduction in prey, and effects of increased turbidity.

Response: NMFS provided a detailed discussion of the potential effects of this action in the notice of the proposed IHA (78 FR 80386, December 31, 2013) and determined the analyses and preliminary determinations were appropriate. The comment does not provide any specific recommendations or criticism regarding the sufficiency of those analyses. The potential effects of this action are also addressed in NMFS's EA and Biological Opinion (which are incorporated by reference herein).

Comment 14: AITC commented that NMFS focuses mostly on marine mammals in its analysis, but they believe a more comprehensive ecological risk assessment is needed to understand localized and cumulative effects to subsistence use of the ecosystem resources.

Response: The proposed IHA **Federal Register** notice contained analysis of potential impacts to marine mammals, marine mammal habitat, and the availability of marine mammals for subsistence uses. That document thoroughly analyzed these issues, allowing us to come to preliminary determinations that the proposed activity would have a negligible impact on marine mammals and would not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. See response to *Comment 6* for information on NMFS' cumulative effects analysis.

Comment 15: AITC commented that to date NMFS has avoided requests for consultation with affected Native Alaskan Tribal governments on the IHAs, including this one.

Response: Apache and NMFS recognize the importance of ensuring that Alaska Native Organizations (ANOs) and federally recognized tribes are informed, engaged, and involved during the permitting process and will continue to work with the ANOs and tribes to discuss operations and activities. On February 6, 2012, in response to requests for government-to-government consultations by the Cook Inlet Marine Mammal Council (CIMMC)—a now dissolved ANO that represented Cook Inlet tribes—and Native Village of Eklutna, NMFS met with representatives of these two groups and a representative from the Ninilchik. We engaged in a discussion about the proposed IHA for phase 1 of Apache's seismic program, the MMPA process for issuing an IHA, concerns regarding Cook Inlet beluga whales, and how to achieve greater coordination with NMFS on issues that impact tribal concerns. We immediately notified local tribal governments of the publication of this proposed IHA notice and invited their input. However, we did not receive any emails, letters, or phone calls requesting formal government-to-government consultation on this most recent proposed IHA notice.

Additionally, Apache met with the CIMMC on March 29, 2011, to discuss the proposed activities and discuss any subsistence concerns. Apache also met with the Tyonek Native Corporation on November 9, 2010 and the Salamatof Native Corporation on November 22, 2010. Additional meetings were held with the Native Village of Tyonek, the Kenaitze Indian Tribe, and Knik Tribal Council, and the Ninilchik Traditional Council. According to Apache, during these meetings, no concerns were raised regarding potential conflict with subsistence harvest of marine mammals.

Since the issuance of the April 2012 IHA, Apache has maintained regular and consistent communication with federally recognized Alaska Natives. The Alaska Natives, Native Corporations, and ANOs that Apache has communicated with include: the Native Village of Tyonek; Tyonek Native Corporation; Ninilchik Native Association; Ninilchik Traditional Council; Salamatof Native Association; Knikatnu; Knik Native Council; Alexander Creek; Cook Inlet Region, Inc.; the Native Village of Eklutna; Kenaitze Indian Tribe; and Seldovia Native Association. Apache has shared information gathered during the seismic survey conducted under the April 2012 IHA and hosted an information exchange with Alaska Native Villages, Native Corporations, and other Non-Governmental Organizations in the spring of 2013 where data from the past year's monitoring operations were presented. Apache continued to meet with the Native Village of Tyonek, Tyonek Native Corporation, Cook Inlet Region Inc., and other recognized tribes and village corporations in the Cook Inlet Region throughout 2013.

Comment 16: The NRDC and AITC comment that the proposed mitigation measures fail to meet the MMPA's "least practicable adverse impact" standard. The NRDC provides a list of approximately eight measures that NMFS "failed to consider or adequately consider."

Response: NMFS provided a detailed discussion of proposed mitigation measures and the MMPA's "least practicable impact" standard in the notice of the proposed IHA (78 FR 80836, December 31, 2013), which are repeated in the "Mitigation" section of this notice. The measures that NMFS allegedly failed to consider or adequately consider are identified and discussed below:

(1) Seasonal exclusions around river mouths, including early spring (pre-April 14) exclusions around the Beluga River and Susitna Delta, and avoidance of other areas that have a higher probability of beluga occurrence: NMFS has required a 10 mile (16 km)

exclusion zone around the Susitna Delta (which includes the Beluga River) in this IHA. This mitigation mirrors a measure in the Incidental Take Statement for the 2012 and 2013 Biological Opinions. Seismic survey operations involving the use of airguns will be prohibited in this area between April 15 and October 15. In both the MMPA and ESA analysis, NMFS determined that this date range is sufficient to protect Cook Inlet beluga whales and the critical habitat in the Susitna Delta. While data indicate that belugas may use this part of the inlet year round, peak use occurs from early May to late September. NMFS added a 2-week buffer on both ends of this peak usage period to add extra protection to feeding and calving belugas. (In addition, the Alaska Department of Fish and Game (ADF&G) prohibits the use of airguns within 1 mi (1.6 km) of the mouth of any stream listed by the ADF&G on the Catalogue of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes. See additional explanation in "Mitigation Measures Considered but not Required" section, later in this document.)

(2) Use of advance aerial surveys to redirect activity if sufficient numbers of belugas or other species are sighted: Safety and weather permitting, aerial surveys will occur daily. Aerial surveys will be required when operating near river mouths to identify large congregations of beluga whales and harbor seal haul outs. In addition, daily aerial surveys must be conducted when there are any seismic-related activities (including, but not limited to, node laying/retrieval or airgun operations) occurring in either Zone 1 or Zone 2 of Apache's seismic operating area (see Figure 2 in Apache's application). Aerial survey paths will encompass river mouths to search for groups of belugas and harbor seal haulouts. The purposes of these surveys is to mitigate impacts and reduce incidental take by identifying the presence of Cook Inlet belugas and alert the vessels accordingly of necessary actions to avoid or minimize potential disturbance, to monitor the effects of the seismic program on Cook Inlet belugas and their primary feeding and reproduction areas, and to monitor that any displacement from the Susitna Delta region is temporary and would not be likely to cause harm to whales by reducing their ability to feed. This information allows for better planning by PSOs and assists in better understanding of the movements of large groups of beluga whales with respect to the tide. Moreover, aerial observations can be used to locate rarely seen animals that are difficult to track from the vessels.

(3) Field testing and use of alternative technologies, such as vibroseis and gravity gradiometry, to reduce or eliminate the need for airguns and delaying seismic acquisition in higher density areas until the alternative technology of marine vibroseis becomes available: Apache requested takes of marine mammals incidental to the seismic survey operations described in the IHA application, which identified airgun arrays as the technique Apache would employ to acquire seismic data. It would be impractical for NMFS to require Apache to make this kind of change to the specified activity and is beyond the scope of the request for takes incidental to Apache's operation of airguns and other active acoustic sources.

Apache continues to examine new and emerging alternative technology such as marine vibroseis, marine sparkers, and other systems to incorporate into their seismic program. Apache knows of no current technology scaled for industrial use that is reliable enough to meet the environmental challenges of operating in Cook Inlet. Apache is aware that many prototypes are currently in development, and may ultimately incorporate these new technologies into their evaluation process as they enter commercial viability. However, none of these technologies are currently ready for use on a large scale in Cook Inlet. As this technology is developed, Apache will evaluate its utility for operations in the Cook Inlet environment.

(4) Required use of the lowest practicable source level in conducting airgun activity: Apache determined that the 2400 in^3 array provides the data required for Apache's operations. If it is determined that lower source levels or volume outputs are appropriate to complete the seismic acquisition, testing will occur to determine the extent of the new array size that can be used. If a lower source level is acceptable to complete Apache's operations, a new sound source verification will be conducted based on the airgun array and reported to NMFS.

(5) Observance of a 10 knot speed limit for all vessels, including supply vessels, employed in the activity: Apache has indicated that vessels typically move at 2–4 knots during active seismic data acquisition. While other vessels typically do not operate at speeds greater than 10 knots, stipulating vessel speeds could hamper Apache's seismic survey by increasing the amount of time needed to complete the survey because it may take longer to transit to other survey areas, and would not be practicable. In any event, NMFS requires speed and course alterations when a marine mammal is detected outside the 160 dB zone and, based on position and relative motion, is likely to enter the zone. When not conducting seismic acquisition operations, vessels are operated at speeds based upon sea state and safe operating conditions. Moreover, ship strikes of Cook Inlet beluga whales or other Cook Inlet marine mammals have not been an issue.

(6) Limitation of the mitigation airgun to the longest shot interval necessary to carry out its intended purpose: This general comment contained no specific recommendations. However NMFS has added a mitigation measure to the IHA requiring that Apache reduce the shot interval for the mitigation gun to one shot per minute.

(7) Immediate suspension of airgun activity, pending investigation, if any beluga strandings occur within or within an appropriate distance of the year 3 survey area: There is no evidence in the literature that airgun pulses cause marine mammal strandings, and the sounds produced by airguns are quite different from sound sources that have been associated with stranding events, such as military mid-frequency active sonar or sub-bottom profilers. Nevertheless, the IHA requires Apache to immediately cease activities and report unauthorized takes of marine mammals, such as injury, serious injury, or mortality. NMFS will review the circumstances of Apache's unauthorized take and determine if additional mitigation measures are needed before activities can resume to minimize the likelihood of further unauthorized take and to ensure MMPA compliance. Apache may not resume activities until notified by NMFS. Separately the IHA includes measures if injured or dead marine mammals are sighted and the cause cannot be easily determined. In those cases, NMFS will review the circumstances of the stranding event while Apache continues with operations.

(8) Establishment of a larger exclusion zone for beluga whales that is not predicated on the detection of whale aggregations or cow-calf pairs: Both the proposed IHA notice and the issued IHA contain a requirement for Apache to delay the start of airgun use or shutdown the airguns if a beluga whale is visually sighted approaching or within the 160-dB disturbance zone until the animal(s) are no longer present within the 160-dB zone. The measure applies to the sighting of any beluga

whale, not just sightings of groups or cow-calf pairs.

Comment 17: The NRDC comments that monitoring measures should include passive acoustic monitoring (PAM) superior to over-the-side hydrophone, and, for visual surveillance, NMFS should require at least two ship-based PSOs per vessel on watch at all times during daylight hours with a maximum of 2 consecutive hours on watch and 8 hours of watch time per day per PSO.

Response: The passive acoustic monitoring plan for Apache's 2012 survey anticipated the use of a bottom-mounted telemetry buoy to broadcast acoustic measurements using a radio-system link back to a monitoring vessel. Although a buoy was deployed during the first week of surveying under the 2012 IHA, it was not successful. Upon deployment, the buoy immediately turned upside down due to the strong current in Cook Inlet. After retrieval, the buoy was not redeployed and the survey used a single omni-directional hydrophone lowered from the side of the mitigation vessel. During the entire 2012 survey season, Apache's PAM equipment yielded only six confirmed marine mammal detections, one of which was a Cook Inlet beluga whale. The single Cook Inlet beluga whale detection did not, however, result in a shutdown procedure.

Additionally, Joint Base Elmendorf-Fort Richardson, NMML, and ADF&G conducted a 2012 study (Gillespie *et al.*, 2013) to determine if beluga whale observations at the mouth of Eagle River corresponded with acoustic detections received by a PAMBuoy data collection system. The PAMBuoy data collection system was deployed in the mouth of Eagle River from 12–31 August 2012. This study was a trial period conducted with one hydrophone at the mouth of the river. Overall, it was successful in detecting beluga whale echolocation clicks and whistles, but came with several limitations:

- The PAM system was able to reliably detect all whales approaching or entering the river but still performs less well than a human observer;
- Sounds from vessels in Cook Inlet (e.g. vessel noise) have a large chance of interfering with detections from PAM. The mouth of Eagle River has very little vessel traffic, which is likely why the study was successful there and not likely to be successful in Cook Inlet;
- PAMbouys could be a navigational hazard in Cook Inlet for commercial, subsistence, and sport fishing, as well as the commercial vessel traffic traveling through Cook Inlet;
- The limited testing in a very small area should not become the new standard of monitoring in the entire Cook Inlet. The tide, vessel traffic, bathymetry, and substrate of Cook Inlet are far more complex than the study area;
- It appears the hydrophone must be hardwired to the shore which is not practical for mobile marine seismic operations;
- Currently, deployment of the system is done by walking tripods onto the mudflats. This is not feasible for the vast majority of the Apache project area. Walking onto the mudflats in parts of Cook Inlet also poses a safety risk;
- The study found considerable investment would be necessary to develop an ice and debris proof mounting system. Other issues with hydrophone configuration include: at extreme low tides, the hydrophone was uncovered and therefore not usable; the hydrophone had to be located in such a position so that it could be occasionally visually inspected; hydrophone battery supply has to constantly be checked; the costs and practicalities of long-term hydrophone mounting and data transmission have not been determined.; and only one hydrophone was tested, and Apache would need several hydrophones;
- Observer sightings and acoustic detections of belugas generally corresponded with one another. Thus PAMBuoys would be simply duplicating PSO and aerial efforts;
- The wireless modem that transmits the acoustic data to the "base station" was only tested to 3.2 km; and
- The study did not conclude anything about the detection range of the system, except that it was greater than 400 m.

Therefore, given the limited capability of various PAM methodologies for Apache's project in Cook Inlet (see Austin and Zeddies, 2012 for more information), as compared to visual monitoring methods, including expanded daily aerial surveys, the bottom-mounted telemetry buoy and omni-directional hydrophone are no longer considered practicable, and will not be a component of the 2014 seismic survey.

Vessel-based observers are stationed on three vessels with two PSOs on the support vessel and one PSO on each of the two source vessels. Due to space limitations onboard the source vessels, no more than one PSO can be accommodated on each vessel. PSOs monitor for marine mammals during all daylight hours prior to and during seismic survey operations, unless precluded by weather (e.g., fog, ice, high sea states). PSOs on the vessels rotate observation shifts every 4–6 hours in order to better monitor the survey area, implement mitigation measures, and avoid fatigue. In addition, vessel crews are instructed to assist with detecting marine mammals and implementing mitigation measures.

Comment 18: The MMC notes that NMFS is reviewing two other IHA applications for proposed seismic surveys in Cook Inlet in 2014 and that it is not clear whether these applications are seeking separate authorizations for some or all of the same activities. NMFS needs to adopt policies and institute procedures to ensure that separate applications to conduct essentially the same activities in the same areas are considered more holistically. If indeed the applicants are proposing to conduct multiple seismic surveys within the same area, it would increase the numbers of marine mammals taken and expose beluga whales and other marine mammals to unnecessary, avoidable risks. Section 101(a)(5)(D)(ii)(I) of the MMPA directs NMFS to structure IHAs so that they prescribe "other means of effecting the least practicable impact on such species or stock and its habitat." Allowing multiple operators to obtain separate IHAs to conduct duplicative surveys is inconsistent with that mandate. Data sharing and collaboration is critical in habitat areas used by endangered populations, such as Cook Inlet beluga whales. The MMC recommends that NMFS encourage Apache and other applicants proposing to conduct seismic surveys in Cook Inlet in 2014 to collaborate on those surveys and, to the extent possible, submit a single application seeking authorization for incidental harassment of marine mammals.

Response: We agree and have encouraged Apache to cooperate with other interested parties to minimize the impacts of new seismic surveys in the region. Currently, Apache works with other oil and gas operators in the area to enter into cooperative agreements. Sometimes these negotiations are successful, but at other times the companies cannot reach an agreement acceptable to both parties. Apache will continue its discussions with other operators in Cook Inlet to find opportunities to joint venture in oil and gas operations, including seismic data acquisition.

The portion of the statute cited by the MMC refers to the need to require mitigation measures to ensure that the specified activity for which take is authorized in that particular authorization "effects the least practicable impact." Apache proposed

and NMFS has required a rigorous mitigation and monitoring plan to ensure that Apache's program meets that standard. Moreover, NMFS will not issue IHAs to other applicants if that standard cannot be met. Regarding the issue of cumulative impacts, see our response to *Comment 6*.

Comment 19: Apache comments that there is no scientific basis or rationale for the 10 mi (16 km) buffer spanning from the Beluga River to the Little Susitna River and requests that the exclusion zone be described as a 5.9 mi (9.5 km) radius from the mouth of the Big Susitna River.

Response: As described in the proposed IHA notice and in detail in the 2013 Biological Opinion, the seasonal exclusion area contained in the Terms and Conditions section of the Incidental Take Statement is defined as 10 mi (16 km) of the mean higher high water (MHHW) line of the Susitna Delta (Beluga River to the Little Susitna River). This zone is based on the location of beluga whales during the spring and fall in that area for foraging and calving with a buffer to keep sound over 160 dB (rms) out of this area. NMFS does not support the suggested reduction in distance and has included the mitigation measure in the IHA with the 10 mi (16 km) setback.

Comment 20: Apache requested clarification on the aerial monitoring measures (condition 7(c)(ii) in the proposed IHA) to reduce redundancy.

Response: Conditions 7(c)(ii) and 7(c)(iv) both outlined parameters for conducting aerial surveys in Zone 1 of Apache's operating area, but the language did not match and thus created some confusion. NMFS has combined the two conditions in the proposed IHA into one condition in this final IHA (now condition 7(c)(ii)) to read as follows: "When operating in Zone 1 (see Figure 2 for proposed survey zones), flight paths should encompass areas from Anchorage, along the coastline of the Susitna Delta to Tyonek, across the inlet to Point Possession, around the coastline of Chickaloon Bay to Burnt Island, and across to Anchorage (or in reverse order). The surveys will continue daily when Apache has any activities north or east of a line from Tyonek across to the eastern side of Number 3 Bay of the Captain Cook State Recreation Area (IHA Application Figure 19)." NMFS has also added language to the final IHA specific to aerial monitoring when Apache is operating in Zone 2.

Comment 21: Apache requested to only fly aerial surveys when airguns are in operation but not at other times (i.e., node laying/retrieval).

Response: In the marine mammal monitoring plan submitted with the IHA application, Apache proposed to conduct aerial surveys both during active seismic airgun operations and during other activities, such as node laying/retrieval. This is included in the Terms and Conditions of the ESA ITS, and was included in the proposed IHA notice. The purpose of flying during both active airgun operations and other operations is to better understand distribution and abundance of marine mammals (especially beluga whales) in the operating area and to better understand if displacement is occurring as a result of the operation. Therefore, NMFS has required aerial monitoring flights to occur for both activities in the final IHA.

Comment 22: Apache requested that language is added to clarify that permitted Level B harassment takes are estimated from the methods described in Apache's application but that the permitted Level B takes are for actual individual marine mammals observed inside of the exclusion zones by the PSOs.

Response: In the IHA application, Apache presented a detailed equation that indicated when 30 "estimated" beluga takes may occur. In the application, Apache stated: "Apache will operate in Zone 1 or Zone 2 until the 30 calculated takes of belugas has been met or the IHA expires." We based our analysis on the fact that Apache predicted that 30 takes would occur if they operated within a specified area. If, for example, Apache operates in double that amount of area or time, then we would have needed to estimate a higher level of activity. Apache cannot conduct more activity than what was predicted and analyzed in the application and proposed IHA.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS's jurisdiction that could occur near operations in Cook Inlet include three cetacean species, all odontocetes (toothed whales): beluga whale (*Delphinapterus leucas*), killer whale (*Orcinus orca*), and harbor porpoise (*Phocoena phocoena*), and two pinniped species: harbor seal (*Phoca vitulina richardsi*) and Steller sea lions (*Eumetopias jubatus*). The marine mammal species that is likely to be encountered most widely (in space and time) throughout the period of the planned surveys is the harbor seal. While killer whales and Steller sea lions have been sighted in upper Cook Inlet, their occurrence is considered rare in that portion of the Inlet.

Of the five marine mammal species likely to occur in the proposed marine survey area, Cook Inlet beluga whales and Steller sea lions are listed as endangered under the ESA (Steller sea lions are listed as two distinct population segments (DPSs), an eastern and a western DPS; the relevant DPS in Cook Inlet is the western DPS). The eastern DPS was recently removed from the endangered species list (78 FR 66139, November 4, 2013). These species are also designated as "depleted" under the MMPA. Despite these designations, Cook Inlet beluga whales and the western DPS of Steller sea lions have not made significant progress towards recovery. Data indicate that the Cook Inlet population of beluga whales has been decreasing at a rate of 1.1 percent annually between 2001 and 2011 (Allen and Angliss, 2013). A recent review of the status of the population indicated that there is an 80% chance that the population will decline further (Hobbs and Shelden 2008). Counts of non-pup Steller sea lions at trend sites in the Alaska western stock increased 11% from 2000 to 2004 (Allen and Angliss, 2013). These were the first region-wide increases for the western stock since standardized surveys began in the 1970s and were due to increased or stable counts in all regions except the western Aleutian Islands. Between 2004 and 2008, Alaska western non-pup counts increased only 3%: eastern Gulf of Alaska (Prince William Sound area) counts were higher and Kenai Peninsula through Kiska Island counts were stable, but western Aleutian counts continued to decline. Johnson (2010) analyzed western Steller sea lion population trends in Alaska and concluded that the overall 2000–2008 trend was a decline 1.5% per year; however, there continues to be considerable regional variability in recent trends (Allen and Angliss, 2013). NMFS has not been able to complete a non-pup survey of the AK western stock since 2008, due largely to weather and closure of the Air Force base on Shemya in 2009 and 2010.

Pursuant to the ESA, critical habitat has been designated for Cook Inlet beluga whales and Steller sea lions. The proposed action falls within critical habitat designated in Cook Inlet for beluga whales but is not within critical habitat designated for Steller sea lions. The portion of beluga whale critical habitat—identified as Area 2 in the critical habitat designation—where the seismic survey will occur is located south of the Area 1 critical habitat where belugas are particularly vulnerable to impacts due to their high seasonal densities and the biological

importance of the area for foraging, nursery, and predator avoidance. Area 2 is based on dispersed fall and winter feeding and transit areas in waters where whales typically appear in smaller densities or deeper waters (76 FR 20180, April 11, 2011).

There are several species of mysticetes that have been observed infrequently in lower Cook Inlet, including minke whale (*Balaenoptera acutorostrata*), humpback whale (*Megaptera novaeangliae*), fin whale (*Balaenoptera physalus*), and gray whale (*Eschrichtius robustus*). Because of their infrequent occurrence in the location of seismic acquisition, take is not likely, and they are not included in this IHA notice. Sea otters also occur in Cook Inlet but are managed by the USFWS and are therefore not considered further in this IHA notice. The Notice of Proposed IHA (78 FR 80836, December 31, 2013) and Apache's application contain detailed descriptions of the status, distribution, seasonal distribution, abundance, and life history of the five marine mammal species most likely to occur in the project area. That information has not changed and is therefore not repeated here. Additional information can also be found in the NMFS 2012 Alaska Stock Assessment Report on the Internet at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2012.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., seismic airgun operations, vessel movement) have been observed to or are thought to impact marine mammals. This section may include a discussion of known effects that do not rise to the level of an MMPA take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). The discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take. This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented or how either of those will shape the anticipated impacts from this specific activity. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis" section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, the "Mitigation" section, and the "Anticipated Effects on Marine Mammal Habitat" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

Operating active acoustic sources, such as airgun arrays, has the potential for adverse effects on marine mammals. The majority of anticipated impacts would be from the use of acoustic sources.

The effects of sounds from airgun pulses might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.*, 1995). However, for reasons discussed in the proposed IHA, it is unlikely that there would be any cases of temporary, or especially permanent, hearing impairment resulting from Apache's activities. As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.*, 1995).

In the "Potential Effects of the Specified Activity on Marine Mammals" section of the Notice of Proposed IHA (78 FR 80836, December 31, 2013), NMFS included a qualitative discussion of the different ways that Apache's 2014 3D seismic survey program may potentially affect marine mammals. The discussion focused on information and data regarding potential acoustic and non-acoustic effects from seismic activities (i.e., use of airguns, pingers, and support vessels and aircraft). Marine mammals may experience masking and behavioral disturbance. The information contained in the "Potential Effects of Specified Activities on Marine Mammals" section from the proposed IHA has not changed. Please refer to the proposed IHA for the full discussion (78 FR 80836, December 31, 2013).

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations. For the airgun sound generated from Apache's seismic surveys, sound will consist of low frequency (under 500 Hz) pulses with extremely short durations (less than one second). There is little concern regarding masking near the sound source due to the brief duration of these pulses and relatively longer silence between air gun shots (approximately 12 seconds). Masking from airguns is more likely in low-frequency marine mammals like mysticetes (which do not occur or are uncommon in the survey area). It is less likely for mid- to high-frequency cetaceans and pinnipeds.

Hearing impairment (either temporary or permanent) is unlikely. Given the higher level of sound necessary to cause permanent threshold shift as compared with temporary threshold shift, it is considerably less likely that permanent threshold shift would occur during the seismic survey in Cook Inlet. Cetaceans generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent as those of cetaceans, and occasionally they seem to be attracted to operating seismic vessels (NMFS, 2010).

Serious injury or mortality is not anticipated from use of the equipment. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from

exposure to airgun pulses, even in the case of large air gun arrays. It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in Cook Inlet. Beluga whale strandings in Cook Inlet are not uncommon; however, these events often coincide with extreme tidal fluctuations ("spring tides") or killer whale sightings (Shelden *et al.*, 2003). For example, in August 2012, a group of Cook Inlet beluga whales stranded in the mud flats of Turnagain Arm during low tide and were able to swim free with the flood tide. No strandings or marine mammals in distress were observed during the 2D test survey conducted by Apache in March 2011, and none were reported by Cook Inlet inhabitants. Furthermore, no strandings were reported during seismic survey operations conducted under the April 2012 IHA. Accordingly, NMFS does not expect any marine mammals will incur serious injury or mortality in Cook Inlet or strand as a result of the proposed seismic survey.

Studies on the reactions of cetaceans to aircraft show little negative response (Richardson *et al.*, 1995). In general, reactions range from sudden dives and turns and are typically found to decrease if the animals are engaged in feeding or social behavior. Whales with calves or in confined waters may show more of a response. Generally there has been little or no evidence of marine mammals responding to aircraft overflights when altitudes are at or above 305 m (1,000 ft), based on three decades of flying experience in the Arctic (NMFS, unpublished data). Based on long-term studies that have been conducted on beluga whales in Cook Inlet since 1993, NMFS expect that there will be no effects of this activity on beluga whales or other cetaceans. No change in beluga swim directions or other noticeable reactions have been observed during the Cook Inlet aerial surveys flown from 183 to 244 m (600 to 800 ft) (e.g., Rugh *et al.*, 2000). By applying operational requirements regarding altitude, sound levels underwater are not expected to rise to the level of a take.

Vessel activity and noise associated with vessel activity will temporarily increase in the action area during Apache's seismic survey as a result of the operation of nine vessels. The addition of nine vessels and noise due to vessel operations associated with the seismic survey would not be outside the present experience of marine mammals in Cook Inlet, although levels may increase locally. Vessels will be operating at slow speed (2–4 knots) when conducting surveys and in a purposeful manner to and from work sites in as direct a route as possible. Marine mammal monitoring observers and passive acoustic devices will alert vessel captains as animals are detected to ensure safe and effective measures are applied to avoid coming into direct contact with marine mammals. Therefore, NMFS neither anticipates nor authorizes takes of marine mammals from ship strikes.

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat and other marine species are associated with elevated sound levels produced by airguns and other active acoustic sources. However, other potential impacts to the surrounding habitat from physical disturbance are also possible. The proposed IHA contains a full discussion of the potential impacts to marine mammal habitat and prey species in the project area. No changes have been made to that discussion. Please refer to the proposed IHA for the full discussion of potential impacts to marine mammal habitat (78 FR 80836, December 31, 2013). NMFS has determined that Apache's 3D seismic survey program is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). This section summarizes the required mitigation measures contained in the IHA.

Mitigation Measures in Apache's Application

Apache listed the following protocols to be implemented during its seismic survey in Cook Inlet.

1. Exclusion and Disturbance Zones

Apache will establish exclusion zones corresponding to the 180 dB (rms) isopleth for cetaceans and the 190 dB (rms) isopleth for pinnipeds to avoid Level A harassment of all marine mammals and will shut down or power down operations if animals are seen approaching this zone (more detail next). Additionally, Apache will monitor the Level B harassment disturbance zone corresponding to the 160 dB (rms) isopleth for all marine mammals and implement shut down measures if any beluga whales or groups of five or more harbor porpoise or killer whales are seen entering or approaching the Level B harassment disturbance zone.

2. Power Down and Shutdown Procedures

A power down is the immediate reduction in the number of operating energy sources. A shutdown is the immediate cessation of firing of all energy sources. The arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full arrays but is outside the applicable exclusion zone of the single source. If a marine mammal is sighted within the applicable exclusion zone of the single energy source, the entire array will be shutdown (i.e., no sources firing). Following a power down or a shutdown, airgun activity will not resume until the marine mammal has left the applicable exclusion zone. The animal will be considered to have left the zone if it: (1) Is visually observed to have left the zone; (2) has not been seen within the zone for 15 minutes in the case of pinnipeds and small odontocetes; or (3) has not been seen within the zone for 30 minutes in the case of large odontocetes, including killer whales and belugas.

3. Ramp-Up Procedures

A ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of air guns firing until the full volume is achieved. The purpose of a ramp-up (or "soft start") is to "warn" cetaceans and pinnipeds in the vicinity of the airguns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the seismic survey, the seismic operator will ramp up the airgun array slowly. NMFS requires the rate of ramp-up to be no more than 6 dB per 5-minute period. Ramp-up is used at the start of airgun operations, after a power- or shut-down, and after any period of greater than 10 minutes in duration without airgun operations (i.e., extended shutdown).

A full ramp-up after a shutdown will not begin until there has been a minimum of 30 minutes of observation

of the Level A harassment exclusion zones by PSOs to assure that no marine mammals are present. The entire exclusion zone must be visible during the 30-minute lead-in to a full ramp up. If the entire exclusion zone is not visible, then ramp-up from a cold start cannot begin. If a marine mammal(s) is sighted within the relevant exclusion zone during the 30-minute watch prior to ramp-up, ramp-up will be delayed until the marine mammal(s) is sighted outside of the zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds (e.g. harbor porpoises, harbor seals, and Steller sea lions), or 30 minutes for large odontocetes (e.g., killer whales and beluga whales).

4. Operation of Mitigation Airgun at Night

Apache proposes to conduct both daytime and nighttime operations. Nighttime operations would only be initiated if a mitigation airgun (typically the 10 in^3) has been continuously operational from the time that PSO monitoring has ceased for the day. The mitigation airgun would operate on a longer duty cycle than the full airgun arrays, firing every 60 seconds. At night, the vessel captain and crew would maintain lookout for marine mammals and would order the airgun(s) to be shut down if marine mammals are observed in or about to enter the established exclusion or disturbance zones. Seismic activity would not ramp up from an extended shut-down (i.e., when the airgun has been down with no activity for at least 10 minutes) during nighttime operations and survey activities would be suspended until the following day because dedicated PSOs would not be on duty.

5. Speed or Course Alteration

If a marine mammal is detected outside the Level A (injury) harassment zone and, based on its position and the relative motion, is likely to enter that zone, the vessel's speed and/or direct course may, when practical and safe, be changed that also minimizes the effect on the seismic program. This can be used in coordination with a power down procedure. The marine mammal activities and movements relative to the seismic and support vessels will be closely monitored to ensure that the marine mammal does not approach within the applicable exclusion radius. If the mammal appears likely to enter the exclusion radius, further mitigative actions will be taken, i.e., either further course alterations, power down, or shut down of the airgun(s).

6. Shut-downs for Beluga Whales and Aggregations of Other Cetaceans

A 160-dB Level B harassment disturbance zone would be established and monitored in Cook Inlet during all seismic surveys. As mentioned previously, Whenever a beluga whale or an aggregation of killer whales or harbor porpoises (five or more individuals of any age/sex class) are observed approaching the 160-dB zone around the survey operations, the survey activity will not commence or will shut down, until they are no longer present within the 160-dB zone of seismic surveying operations.

Additional Mitigation Measures Required by NMFS

Activities shall not occur within 16 km (10 mi) of the MHHW line of the Susitna Delta (Beluga River to the Little Susitna River) between April 15 and October 15. The purpose of this mitigation measure is to protect the designated critical habitat in this area that is important for beluga whale feeding and calving during the spring and fall months. The range of the setback required creates an effective buffer where sound does not encroach on this important habitat during those months. Activities can occur within this area from October 16–April 14.

Additionally, seismic survey operations, involving the use of airguns and pingers, must cease if the total authorized takes of any marine mammal species are met or exceeded.

Mitigation Measures Considered but Not Required

NMFS considered whether additional time/area restrictions were warranted. NMFS determined that such restrictions are not necessary or practicable elsewhere in the 2014 survey area. Beluga whales remain in Cook Inlet year-round, but demonstrate seasonal movement within the Inlet; in the summer and fall, they concentrate in upper Cook Inlet's rivers and bays, but tend to disperse offshore and move to mid-Inlet in winter (Hobbs *et al.*, 2005). The available information indicates that in the winter months belugas are dispersed in deeper waters in mid-Inlet past Kalgin Island, with occasional forays into the upper inlet, including the upper ends of Knik and Turnagain Arms. Their winter distribution does not appear to be associated with river mouths, as it is during the warmer months. The spatial dispersal and diversity of winter prey are likely to influence the wider beluga winter range throughout the mid-Inlet. Apache expects to mobilize crews and equipment for its seismic survey in February and March 2014, which would coincide with the time of year when belugas are dispersed offshore in the mid-Inlet and away from river mouths. In the spring, when survey operations are expected to start, beluga whales are regularly sighted in the upper Inlet beginning in late April or early May, coinciding with eulachon runs in the Susitna River and Twenty Mile River in Turnagain Arm. Therefore, NMFS determined that the timing and location of the seismic survey, with the exclusion zone around the Susitna Delta, adequately avoids areas and seasons that overlap with important beluga whale behavioral patterns.

NMFS also considered whether to require time area restrictions for areas identified as home ranges during August through March for 14 satellite-tracked beluga whales in Hobbs *et al.* (2005). NMFS has determined not to require time/area restrictions for these areas within the phase 3 survey area. The areas in question within phase 3 are relatively large areas in which belugas are dispersed. In addition, data for 14 tracked belugas do not establish that belugas will not appear in other areas—particularly during the periods of the year when belugas are more dispersed in Cook Inlet. We do not have enough information to establish that time/area restrictions for these areas would yield a benefit for the species. Such restrictions also are not practicable given the applicant's need to survey the areas in question and the need for operational flexibility given weather conditions, real-time adjustment of operations to avoid marine mammals and other factors. The suite of other mitigation and monitoring measures still apply whenever survey operations occur.

Mitigation Conclusions

NMFS has carefully evaluated Apache's mitigation measures and considered a range of other measures, including measures recommended by the public, in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measures are expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

• The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS and those recommended by the public, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Apache submitted information regarding marine mammal monitoring to be conducted during seismic operations as part of the IHA application. That information can be found in Sections 12 and 14 of the application.

Monitoring Measures

1. Visual Vessel-Based Monitoring

Vessel-based monitoring for marine mammals will be conducted by experienced PSOs throughout the period of marine survey activities. PSOs will monitor the occurrence and behavior of marine mammals near the survey vessel during all daylight periods during operation and during most daylight periods when airgun operations are not occurring. PSO duties include watching for and identifying marine mammals, recording their numbers, distances, and reactions to the survey operations, and documenting "take by harassment" as defined by NMFS.

A sufficient number of PSOs is required onboard the survey vessel to meet the following criteria: (1) 100 percent monitoring coverage during all periods of survey operations in daylight; (2) maximum of 4 consecutive hours on watch per PSO; and (3) maximum of 12 hours of watch time per day per PSO.

PSO teams shall consist of experienced field biologists. An experienced field crew leader would supervise the PSO team onboard the survey vessel. Apache currently plans to have PSOs aboard three vessels: the two source vessels (*M/V Peregrine Falcon* and *M/V Arctic Wolf*) and one support vessel (*M/V Dreamcatcher*). Two PSOs would be on the source vessels, and two PSOs would be on the support vessel to observe and implement the exclusion, power down, and shut down areas. When marine mammals are about to enter or are sighted within designated Level B harassment disturbance zones and Level A harassment exclusion zones, airgun or pinger operations would be powered down (when applicable) or shut down immediately. The vessel-based observers would watch for marine mammals during all periods when sound sources are in operation and for a minimum of 30 minutes prior to the start of airgun or pinger operations after an extended shut down.

Crew leaders and most other biologists serving as observers would be individuals with experience as observers during seismic surveys in Alaska or other areas in recent years.

The observer(s) will watch for marine mammals from the best available vantage point on the source and support vessels, typically the flying bridge. The observer(s) will scan systematically with the unaided eye and 7x50 reticle binoculars. Laser range finders will be available to assist with estimating distance on the two source vessels. Personnel on the bridge will assist the observer(s) in watching for marine mammals. Seismic survey personnel will receive the same training as the marine mammal PSOs.

All observations will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data would be verified by computerized validity data checks as the data are entered and by subsequent manual checks of the database. These procedures would allow for initial summaries of the data to be prepared during and shortly after the completion of the field program, and would facilitate transfer of the data to statistical, geographical, or other programs for future processing and achieving. When a mammal sighting is made, the following information about the sighting will be recorded:

• Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the PSO, apparent reaction to activities (e.g., none, avoidance, approach, paralleling, etc.), closest point of approach, and behavioral pace;

• Time, location, speed, activity of the vessel (e.g., seismic airguns off, pingers on, etc.), sea state, ice cover, visibility, and sun glare; and

• The positions of other vessel(s) in the vicinity of the PSO location.

The ship's position, speed of support vessels, and water temperature, water depth, sea state, ice cover, visibility, and sun glare will also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

2. Visual Shore-Based Monitoring

In addition to the vessel-based PSOs, Apache will utilize a shore-based station daily, when safety and weather permit, to visually monitor for marine mammals. The shore-based station would follow all safety procedures, including bear safety. The location of the shore-based station will be sufficiently high to observe marine mammals; the PSOs will be equipped with pedestal mounted "big eye" (20 × 110) binoculars. The shore-based PSOs will scan the area prior to, during, and after the airgun operations and will be in contact with the vessel-based PSOs via radio to communicate sightings of marine mammals approaching or within the project area. This communication will allow the vessel-based observers to go on a "heightened" state of alert regarding occurrence of marine mammals in the area and aid in timely implementation of mitigation measures.

3. Aerial-Based Monitoring

Safety and weather permitting, Apache will conduct daily aerial surveys when there are any seismic-related activities (including but not limited to node laying/retrieval or airgun operations). Safety and weather permitting, surveys are to be flown even if the airguns are not being fired. Flights will be conducted with an aircraft with adequate viewing capabilities (i.e., view not obstructed by wing or other obstruction).

When operating north or east of a line from Tyonek across to the eastern side of Number 3 Bay of the Captain Cook State Recreation Area, Cook Inlet, Apache will fly daily aerial surveys (safety and weather permitting). Flight paths shall encompass areas from Anchorage, along the coastline of the Susitna Delta to Tyonek, across the inlet to Point Possession, around the coastline of Chickaloon Bay to Burnt Island, and across to Anchorage (or in reverse order). These designations apply when Apache is operating in Zone 1 (see Figure 2 in the IHA application). These aerial surveys will be conducted in order to notify the vessel-based PSOs of marine mammals that may be on a

path that could intersect with the seismic survey, and so that Apache can determine if operations should be relocated or temporarily suspended.

When operating in Zone 2 (see Figure 2 in the IHA application), Apache will conduct aerial surveys, safety and weather permitting, a minimum distance of 30 km (18.6 mi) around the seismic operating area expected for that day. Additionally, Apache will, safety and weather permitting, conduct aerial surveys when operating near river mouths to identify large congregations of beluga whales and harbor seal haul outs. Again, these aerial surveys will be conducted in order to notify the vessel-based PSOs of the presence of marine mammals that may be on a path that could intersect with the seismic survey, and so that Apache can determine if operations should be relocated or temporarily suspended.

Weather and scheduling permitting, aerial surveys will fly at an altitude of 305 m (1,000 ft). In the event of a marine mammal sighting, aircraft would attempt to maintain a radial distance of 457 m (1,500 ft) from the marine mammal(s). Aircraft would avoid approaching marine mammals from head-on, flying over or passing the shadow of the aircraft over the marine mammal(s). By following these operational requirements, sound levels underwater are not expected to meet or exceed NMFS harassment thresholds (Richardson *et al.*, 1995; Blackwell *et al.*, 2002).

Based on data collected from Apache during its survey operations conducted under the April 2012 IHA, NMFS has determined that the foregoing monitoring measures will allow Apache to identify animals nearing or entering the Level B harassment zone with a reasonably high degree of accuracy.

Reporting Measures

Reports will be submitted to NMFS immediately if 25 belugas are detected in the Level B harassment zone to evaluate and make necessary adjustments to monitoring and mitigation. If the number of detected takes for any marine mammal species is met or exceeded, Apache will immediately cease survey operations involving the use of active sound sources (e.g., airguns and pingers) and notify NMFS.

1. Weekly Reports

Weekly reports will be submitted to NMFS no later than the close of business (Alaska time) each Thursday during the weeks when in-water seismic activities take place. The field reports will summarize species detected, in-water activity occurring at the time of the sighting, behavioral reactions to in-water activities, and the number of marine mammals taken.

2. Monthly Reports

Monthly reports will be submitted to NMFS for all months during which in-water seismic activities take place. The monthly report will contain and summarize the following information:

- Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings.
- Species, number, location, distance from the vessel, and behavior of any sighted marine mammals, as well as associated seismic activity (number of power-downs and shutdowns), observed throughout all monitoring activities.
- An estimate of the number (by species) of: (i) pinnipeds that have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 µPa (rms) and/or 190 dB re 1 µPa (rms) with a discussion of any specific behaviors those individuals exhibited; and (ii) cetaceans that have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 µPa (rms) and/or 180 dB re 1 µPa (rms) with a discussion of any specific behaviors those individuals exhibited.
- A description of the implementation and effectiveness of the: (i) terms and conditions of the Biological Opinion's Incidental Take Statement (ITS); and (ii) mitigation measures of the IHA. For the Biological Opinion, the report shall confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness, for minimizing the adverse effects of the action on ESA-listed marine mammals.

3. 90-Day Technical Report

A report will be submitted to NMFS within 90 days after the end of the project. The report will summarize all activities and monitoring results (i.e., vessel and shore-based visual monitoring and aerial monitoring) conducted during in-water seismic surveys. The Technical Report will include the following:

- Summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals).
- Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare).
- Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.
- Analyses of the effects of survey operations.
- Sighting rates of marine mammals during periods with and without seismic survey activities (and other variables that could affect detectability), such as: (i) Initial sighting distances versus survey activity state; (ii) closest point of approach versus survey activity state; (iii) observed behaviors and types of movements versus survey activity state; (iv) numbers of sightings/individuals seen versus survey activity state; (v) distribution around the source vessels versus survey activity state; and (vi) estimates of take by Level B harassment based on presence in the 160 dB harassment zone.

4. Notification of Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), Apache would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the

circumstances of the prohibited take. NMFS would work with Apache to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Apache would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), Apache would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Apache to determine whether modifications in the activities are appropriate.

In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Apache would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. Apache would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the marine survey program. Anticipated impacts to marine mammals are associated with noise propagation from the sound sources (e.g., airguns and pingers) used in the seismic survey; no take is expected to result from the detonation of explosives onshore, as supported by the SSV study, from vessel strikes because of the slow speed of the vessels (2–4 knots), or from aircraft overflights, as surveys will be flown at a minimum altitude of 305 m (1,000 ft) and at 457 m (1,500 ft) when marine mammals are detected.

Apache requested and NMFS has authorized the take of five marine mammal species by Level B harassment. These five marine mammal species are: Cook Inlet beluga whale; killer whale; harbor porpoise; harbor seal; and Steller sea lion.

For impulse sounds, such as those produced by airgun(s) used in the seismic survey, NMFS uses the 160 dB re 1 μPa (rms) isopleth to indicate the onset of Level B harassment. The current Level A (injury) harassment threshold is 180 dB (rms) for cetaceans and 190 dB (rms) for pinnipeds. Section 7 of Apache's application contains a full description of the methodology used by Apache to estimate takes by harassment, including calculations for the 160 dB (rms) isopleths and marine mammal densities in the areas of operation (see **ADDRESSES**), which was also provided in the proposed IHA notice (78 FR 80836, December 31, 2013). Please refer to those documents for the full description of the methodology. This discussion is not repeated here. NMFS verified Apache's methods and used Apache's take estimates in its analyses. However, as discussed previously in this document in the response to *Comment 11,* NMFS has increased the authorized take for harbor seals from that requested by Apache and published in the proposed IHA notice to the average estimate noted in Apache's IHA application.

The estimated take levels presented in Table 5 in the proposed IHA **Federal Register** notice and in Table 8 of Apache's application identify the worst-case probability of encountering these marine mammal species within the 160 dB zone during the survey and does not account for seasonal distribution of these species, haul outs of harbor seals and Steller sea lions, or the rigorous mitigation and monitoring techniques implemented by Apache to reduce Level B takes to all species.

Table 1 here outlines the density estimates used to estimate Level B takes, the authorized Level B harassment take levels, the abundance of each species in Cook Inlet, the percentage of each species or stock estimated to be taken, and current population trends.

TABLE 1—DENSITY ESTIMATES, AUTHORIZED LEVEL B HARASSMENT TAKE LEVELS, SPECIES OR STOCK ABUNDANCE, PERCENTAGE OF POPULATION PROPOSED TO BE TAKEN, AND SPECIES TREND STATUS

Species	Average density (#/hr/km^2)	Authorized level B take	Abundance	Percentage of population	Trend
Beluga Whale	Zone 1 = 0.0212 Zone 2 = 0.0056	30	312	9.6	Decreasing.
Harbor Seal	0.00512	440	22,900	1.9	Stable.
Harbor Porpoise	0.00009	20	25,987	0.08	No reliable information.
Killer Whale	0.00001	10	1,123 (resident) 552 (transient)	0.89 1.8	Resident stock possibly increasing. Transient stock stable.
Steller Sea Lion	0.00016	20	45,916	0.04	Decreasing but with regional variability (some stable).

Analysis and Determinations

Negligible Impact

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, feeding, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat, and the status of the species.

Given the required mitigation and related monitoring, no injuries or mortalities are anticipated to occur as a result of Apache's seismic survey in Cook Inlet, and none are authorized. Additionally, animals in the area are not expected to incur hearing impairment (i.e., TTS or PTS) or non-auditory physiological effects. The number of takes that are anticipated and authorized are expected to be limited to short-term Level B behavioral harassment. The seismic airguns do not operate continuously over a 24-hour period. Rather airguns are operational for a few hours at a time totaling about 12 hours a day.

Both Cook Inlet beluga whales and the western DPS of Steller sea lions are listed as endangered under the ESA. Both stocks are also considered depleted under the MMPA, and both stocks are declining at a rate of about 1.1–1.5 percent per year. Additionally, as discussed in NMFS' EA for this IHA, the Cook Inlet beluga whale population has not rebounded since the moratorium on subsistence hunting was enacted in 1999 and extended indefinitely in December 2000. The population of belugas has a constricted range that is confined to the Inlet. The other three species that may be taken by harassment during Apache's seismic survey program are not listed as threatened or endangered under the ESA nor as depleted under the MMPA.

Odontocete (including Cook Inlet beluga whales, killer whales, and harbor porpoises) reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. When in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 10–20 km (6–12 mi) of seismic vessels during aerial surveys (Miller *et al.,* 2005). However, as noted previously, Cook Inlet belugas are more accustomed to anthropogenic sound than beluga whales in the Beaufort Sea. Therefore, the results from the Beaufort Sea surveys do not directly relate to potential reactions of Cook Inlet beluga whales. Also, due to the dispersed distribution of beluga whales in Cook Inlet during winter and the concentration of beluga whales in upper Cook Inlet from late April through early fall, belugas would likely occur in small numbers in the survey area designated as Zone 2 by Apache during the survey period. For the same reason, it is unlikely that animals would be exposed to received levels capable of causing injury.

Taking into account the required mitigation measures, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment". However, even Level B harassment takes will likely be limited and less than those authorized based on the rigorous mitigation measures required in the IHA, especially for cetaceans. Apache is required to shutdown airguns when any beluga whale is sighted approaching or entering the Level B harassment disturbance zone and must also shutdown if aggregations of five or more harbor porpoise or killer whales are sighted approaching or entering this same zone. This is meant to reduce behavioral disturbances even further. Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of marine mammal habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions. In addition, the area where the survey will take place is not known to be an important location where beluga whales congregate for feeding, calving, or nursing. The primary location for these biological life functions occur in the Susitna Delta region of upper Cook Inlet. The IHA requires Apache to implement a 16 km (10 mi) seasonal exclusion from seismic survey operations in this region from April 15-October 15. The highest concentrations of belugas are typically found in this area from early May through September each year. NMFS has incorporated a 2-week buffer on each end of this seasonal use timeframe to account for any anomalies in distribution and marine mammal usage.

Mitigation measures such as controlled vessel speed, dedicated PSOs, non-pursuit, and shutdowns or power downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects of the seismic survey are expected to be short-term, with no lasting biological consequence. Therefore, because exposure of cetaceans to sounds produced by this phase of Apache's seismic survey is not anticipated to have any fitness effects that would reduce the reproductive success or survivorship of any individuals, it is not expected to affect annual rates of recruitment or survival of the stock.

Some individual pinnipeds may be exposed to sound from the seismic surveys more than once during the timeframe of the project. Taking into account the required mitigation measures, effects on pinnipeds are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment". Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of pinniped habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions. In addition, the area where the survey will take place is not known to be an important location where pinnipeds haul out. The closest known haul-out site is located on Kalgin Island, which is about 22 km from the McArthur River. Data from some 2013 aerial surveys indicate large groups of harbor seal sightings in the Susitna Delta region. However, these large groups were sighted during time periods when Apache is not permitted to conduct airgun operations within 16 km (10 mi) of the MHHW line of the Susitna Delta region. For these reasons, the exposure of pinnipeds to sounds produced by this phase of Apache's

seismic survey is not anticipated to have an effect on annual rates of recruitment or survival.

Potential impacts to marine mammal habitat were discussed previously in this document and the proposed IHA notice (see the "Anticipated Effects on Habitat" section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect annual rates of recruitment or survival of marine mammals in the area. Based on the size of Cook Inlet where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere. Additionally, seismic survey operations will not occur in the primary beluga feeding and calving habitat during times of high use.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from Apache's seismic survey will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The authorized takes represent 9.6 percent of the Cook Inlet beluga whale population of approximately 312 animals (Allen and Angliss, 2013), 0.89 percent of the Alaska resident stock and 1.8 percent of the Gulf of Alaska, Aleutian Island and Bering Sea stock of killer whales (1,123 residents and 552 transients), and 0.08 percent of the Gulf of Alaska stock of approximately 25,987 harbor porpoises. The authorized takes for harbor seals represent 1.9 percent of the Cook Inlet/Shelikof stock of approximately 22,900 animals. The authorized takes for Steller sea lions represent 0.04 percent of the western stock of approximately 45,916 animals. These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once.

NMFS finds that any incidental take reasonably likely to result from the effects of the proposed activities, as mitigated through this IHA process, will be limited to small numbers of the affected species or stock sizes. In addition to the quantitative methods used to estimate take, NMFS also considered qualitative factors that further support the "small numbers" determination, including: (1) The seasonal distribution and habitat use patterns of Cook Inlet beluga whales, which suggest that for much of the time only a small portion of the population would be accessible to impacts from Apache's activity, as most animals are found in the Susitna Delta region of Upper Cook Inlet from early May through September; (2) other cetacean species and Steller sea lions are not common in the seismic survey area; (3) the mitigation requirements, which provide spatio-temporal limitations that avoid impacts to large numbers of belugas feeding and calving in the Susitna Delta and limit exposures to sound levels associated with Level B harassment; (4) the required monitoring requirements and mitigation measures described earlier in this document for all marine mammal species will further reduce impacts and the amount of takes; and (5) monitoring results from previous activities that indicated no beluga whale sightings within the Level B harassment disturbance zone and low levels of Level B harassment takes of other marine mammals. Therefore, NMFS determined that the number of animals likely to be taken is small.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Relevant Subsistence Uses

The subsistence harvest of marine mammals transcends the nutritional and economic values attributed to the animal and is an integral part of the cultural identity of the region's Alaska Native communities. Inedible parts of the whale provide Native artisans with materials for cultural handicrafts, and the hunting itself perpetuates Native traditions by transmitting traditional skills and knowledge to younger generations (NOAA, 2007).

The Cook Inlet beluga whale has traditionally been hunted by Alaska Natives for subsistence purposes. For several decades prior to the 1980s, the Native Village of Tyonek residents were the primary subsistence hunters of Cook Inlet beluga whales. During the 1980s and 1990s, Alaska Natives from villages in the western, northwestern, and North Slope regions of Alaska either moved to or visited the south central region and participated in the yearly subsistence harvest (Stanek, 1994). From 1994 to 1998, NMFS estimated 65 whales per year (range 21–123) were taken in this harvest, including those successfully taken for food and those struck and lost. NMFS has concluded that this number is high enough to account for the estimated 14 percent annual decline in the population during this time (Hobbs *et al.*, 2008). Actual mortality may have been higher, given the difficulty of estimating the number of whales struck and lost during the hunts. In 1999, a moratorium was enacted (Public Law 106–31) prohibiting the subsistence take of Cook Inlet beluga whales except through a cooperative agreement between NMFS and the affected Alaska Native organizations. Since the Cook Inlet beluga whale harvest was regulated in 1999 requiring cooperative agreements, five beluga whales have been struck and harvested. Those beluga whales were harvested in 2001 (one animal), 2002 (one animal), 2003 (one animal), and 2005 (two animals). The Native Village of Tyonek agreed not to hunt or request a hunt in 2007, when no co-management agreement was to be signed (NMFS, 2008a).

On October 15, 2008, NMFS published a final rule that established long-term harvest limits on the Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence purposes (73 FR 60976). That rule prohibited harvest for a 5-year period (2008–2012), if the average abundance for the Cook Inlet beluga whales from the prior five years (2003–2007) was below 350 whales. The next 5-year period that could allow for a harvest (2013–2017), would require the previous five-year average (2008–2012) to be above 350 whales. The 2008 Cook Inlet Beluga Whale Subsistence Harvest Final Supplemental Environmental Impact Statement (NMFS, 2008a) authorizes how many beluga whales can be taken during a 5-year interval based on the 5-year population estimates and 10-year measure of the population growth rate. Based on the 2008–2012 5-year abundance estimates, no hunt occurred between 2008 and 2012 (NMFS, 2008a). The CIMMC, which managed the Alaska Native Subsistence fishery with NMFS, was disbanded by a unanimous vote of the Tribes' representatives on June 20, 2012. At this time, no harvest is expected in 2014. Residents of the Native Village of Tyonek are the primary subsistence users in Knik Arm area.

Data on the harvest of other marine mammals in Cook Inlet are lacking. Some data are available on the subsistence harvest of harbor seals, harbor porpoises, and killer whales in Alaska in the marine mammal stock assessments. However, these numbers are for the Gulf of Alaska including Cook Inlet, and they are not indicative of the harvest in Cook Inlet.

Some detailed information on the subsistence harvest of harbor seals is available from past studies conducted by the ADF&G (Wolfe *et al.*, 2009). In

2008, only 33 harbor seals were taken for harvest in the Upper Kenai-Cook Inlet area. In the same study, reports from hunters stated that harbor seal populations in the area were increasing (28.6%) or remaining stable (71.4%). The specific hunting regions identified were Anchorage, Homer, Kenai, and Tyonek, and hunting generally peaks in March, September, and November (Wolfe *et al.*, 2009).

Potential Impacts to Subsistence Uses

Section 101(a)(5)(D) requires NMFS to determine that the authorization will not have an unmitigable adverse impact on the availability of marine mammal species or stocks for subsistence use. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as: an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The primary concern is the disturbance of marine mammals through the introduction of anthropogenic sound into the marine environment during the seismic survey. Marine mammals could be behaviorally harassed and either become more difficult to hunt or temporarily abandon traditional hunting grounds. However, the seismic survey will not have any impacts to beluga harvests as none currently occur in Cook Inlet. Additionally, subsistence harvests of other marine mammal species are limited in Cook Inlet.

Plan of Cooperation or Measures To Minimize Impacts to Subsistence Hunts

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. NMFS regulations define Arctic waters as waters above 60° N. latitude. Consistent with NMFS' implementing regulations, Apache met with the CIMMC—a now dissolved ANO that represented Cook Inlet tribes—on March 29, 2011, to discuss the proposed activities and discuss any subsistence concerns. Apache also met with the Tyonek Native Corporation on November 9, 2010 and the Salamatof Native Corporation on November 22, 2010. Additional meetings were held with the Native Village of Tyonek, the Kenaitze Indian Tribe, and Knik Tribal Council, and the Ninilchik Traditional Council. According to Apache, during these meetings, no concerns were raised regarding potential conflict with subsistence harvest of marine mammals. Apache has identified the following features that are intended to reduce impacts to subsistence users:

- In-water seismic activities will follow mitigation procedures to minimize effects on the behavior of marine mammals and, therefore, opportunities for harvest by Alaska Native communities; and
- Regional subsistence representatives may support recording marine mammal observations along with marine mammal biologists during the monitoring programs and will be provided with annual reports.

Since the issuance of the April 2012 IHA, Apache has maintained regular and consistent communication with federally recognized Alaska Natives. The Alaska Natives, Native Corporations, and ANOs that Apache has communicated with include: The Native Village of Tyonek; Tyonek Native Corporation; Ninilchik Native Association; Ninilchik Traditional Council; Salamatof Native Association; Knikatnu; Knik Native Council; Alexander Creek; Cook Inlet Region, Inc.; the Native Village of Eklutna; Kenaitze Indian Tribe; and Seldovia Native Assocaition. Apache has shared information gathered during the seismic survey conducted under the April 2012 IHA and hosted an information exchange with Alaska Native Villages, Native Corporations, and other Non-Governmental Organizations in the spring of 2013 where data from the past year's monitoring operations was presented.

Apache and NMFS recognize the importance of ensuring that ANOs and federally recognized tribes are informed, engaged, and involved during the permitting process and will continue to work with the ANOs and tribes to discuss operations and activities. On February 6, 2012, in response to requests for government-to-government consultations by the CIMMC and Native Village of Eklutna, NMFS met with representatives of these two groups and a representative from the Ninilchik. We engaged in a discussion about the proposed IHA for phase 1 of Apache's seismic program, the MMPA process for issuing an IHA, concerns regarding Cook Inlet beluga whales, and how to achieve greater coordination with NMFS on issues that impact tribal concerns. Following the publication of this proposed IHA, we contacted the local Native Villages to inform them of the availability of the **Federal Register** notice and the opening of the public comment period and to invite their input. We received one comment letter from several Native organizations, and we have responded to their comments and concerns earlier in this document. However, they did not request a formal government-to-government consultation with us on the third IHA. Apache has continued to meet with the Native Village of Tyonek, Tyonek Native Corporation, Cook Inlet Region Inc., and other recognized tribes and village corporations in the Cook Inlet Region throughout 2013.

Unmitigable Adverse Impact Analysis and Determination

The project will not have any effect on current beluga whale harvests because no beluga harvest will take place in 2014. Additionally, the seismic survey area is not an important native subsistence site for other subsistence species of marine mammals. Also, because of the relatively small proportion of marine mammals utilizing Cook Inlet, the number harvested is expected to be extremely low. Therefore, because the program would result in only temporary disturbances, the seismic program would not impact the availability of these other marine mammal species for subsistence uses.

The timing and location of subsistence harvest of Cook Inlet harbor seals may coincide with Apache's project, but because this subsistence hunt is conducted opportunistically and at such a low level (NMFS, 2013c), Apache's program is not expected to have an impact on the subsistence use of harbor seals.

NMFS anticipates that any effects from Apache's seismic survey on marine mammals, especially harbor seals and Cook Inlet beluga whales, which are or have been taken for subsistence uses, would be short-term, site specific, and limited to inconsequential changes in behavior and mild stress responses. NMFS does not anticipate that the authorized taking of affected species or stocks will reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (1) Causing the marine mammals to abandon or avoid hunting areas; (2) directly displacing subsistence users; or (3) placing physical barriers between the marine mammals and the subsistence hunters; and that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to

allow subsistence needs to be met. Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the required mitigation and monitoring measures, NMFS has determined that there will not be an unmitgable adverse impact on subsistence uses from Apache's activities.

Endangered Species Act (ESA)

There are two marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the proposed project area: The Cook Inlet beluga whale and the western DPS of Steller sea lion. In addition, the proposed action would occur within designated critical habitat for the Cook Inlet beluga whale. NMFS' Permits and Conservation Division consulted with NMFS' Alaska Region Protected Resources Division under section 7 of the ESA on the issuance of the first IHA to Apache under section 101(a)(5)(D) of the MMPA, which analyzed the impacts in the other areas where Apache has proposed to conduct seismic surveys, including Area 2 (the area covered in the second IHA).

On May 21, 2012, NMFS' Alaska Region issued a revised Biological Opinion, which concluded that the IHA is not likely to jeopardize the continued existence of the marine mammal species (such as Cook Inlet beluga whales and Steller sea lions) affected by the seismic survey or destroy or adversely modify designated critical habitat for Cook Inlet beluga whales. Although the Biological Opinion considered the effects of multiple years of seismic surveying in the entire project area as a whole (see Figure 6 in the Biological Opinion), to be cautious, in light of the change in scope, NMFS' Permits and Conservation Division requested reinitiation of consultation under section 7 of the ESA to address these changes in the proposed action. A new Biological Opinion was issued on February 14, 2013. That Biological Opinion determined that the issuance of an IHA is not likely to jeopardize the continued existence of the Cook Inlet beluga whales or the western distinct population segment of Steller sea lions or destroy or adversely modify Cook Inlet beluga whale critical habitat. Finally, the Alaska Region issued an Incidental Take Statement (ITS) for Cook Inlet beluga whales and Steller sea lions. The ITS contains reasonable and prudent measures implemented by terms and conditions to minimize the effects of this take.

The Biological Opinion issued on February 14, 2013, is valid through December 31, 2014. NMFS' Permits and Conservation Division discussed this third IHA request with NMFS' Alaska Region and determined that this IHA falls within the scope and analysis of the current Biological Opinion. This IHA does not trigger any of the factors requiring a reinitiation of consultation. Therefore, a new section 7 consultation was not conducted.

National Environmental Policy Act (NEPA)

NMFS prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of an IHA to Apache to take marine mammals incidental to conducting a 3D seismic survey program in Cook Inlet, Alaska. NMFS has finalized the EA and prepared a FONSI for this action. Therefore, preparation of an Environmental Impact Statement is not necessary.

Authorization

As a result of these determinations, NMFS has issued an IHA to Apache for the take of marine mammals incidental to conducting a seismic survey program in Cook Inlet, Alaska, from March 4 through December 31, 2014, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 4, 2014.

Perry F. Gayaldo,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–05158 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

National Telecommunications and Information Administration

Notice of First Public Meeting on the Establishment of a Multistakeholder Forum on Improving the Operation of the Notice and Takedown System Under the DMCA (as Called for in the Department of Commerce Green Paper, Copyright Policy, Creativity, and Innovation in the Digital Economy)

AGENCY: Office of the Secretary, U.S. Department of Commerce; United States Patent and Trademark Office, U.S. Department of Commerce; National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: In the Department of Commerce's Internet Policy Task Force (Task Force) Green Paper on Copyright Policy, Creativity, and Innovation in the Digital Economy (Green Paper), released on July 31, 2013, the Task Force stated its intention to establish a multistakeholder forum aimed at improving the operation of the notice and takedown system for removing infringing content from the Internet under the Digital Millennium Copyright Act (DMCA). In accordance with its previous recommendations and announcements, the Task Force will launch the multistakeholder forum with an initial meeting on March 20, 2014.

DATES: The public meeting will be held on March 20, 2014, from 9:00 a.m. to 4:00 p.m., Eastern Daylight Time.

ADDRESSES: The Task Force will hold the initial public meeting of the multistakeholder forum at the United States Patent and Trademark Office in the Madison Auditorium on the concourse level of the Madison Building, which is located at 600 Dulany Street, Alexandria, VA 22314. All major entrances to the building are accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meeting, contact Hollis Robinson or Darren Pogoda, Office of Policy and International Affairs, United States Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272–9300; email *hollis.robinson@uspto.gov* or *darren.pogoda@uspto.gov*.

Please direct all media inquiries to the Office of the Chief Communications Officer, USPTO, at (571) 272–8400.

SUPPLEMENTARY INFORMATION:

Background

In the Department of Commerce's Internet Policy Task Force (Task Force) Green Paper on Copyright Policy, Creativity, and Innovation in the Digital Economy (Green Paper), released on July 31, 2013, and in a subsequent request for public comments (issued on October 3, 2013), the Task Force stated its intention to establish an open multistakeholder forum aimed at improving the operation of the notice and takedown system for removing infringing content from the Internet under the Digital Millennium Copyright Act (DMCA). *See* Request for Public Comments and Notice of Public Meeting, 78 FR 61337 (Oct. 3, 2013), available at *http://www.ntia.doc.gov/files/ntia/publications/ntia_pto_rfc_10032013.pdf*.

On December 12, 2013, the Task Force held a public meeting to discuss the

Green Paper, including the proposed open multistakeholder forum. The Task Force also sought comment from stakeholders both prior to and after the December 12, 2013 meeting. An archive of the webcast of the public meeting is available at *http://new.livestream.com/uspto/copyright.* A transcript of the public meeting is available at *http://www.uspto.gov/ip/global/copyrights/121213-USPTO-Green_Paper_Hearing-Transcript.pdf.* Copies of the comments received are available at *http://www.uspto.gov/ip/global/copyrights/green_paper_public_comments.jsp.*

The goal of the open multistakeholder forum is to provide a collaborative forum through which stakeholders will identify best practices and/or produce voluntary agreements for improving the operation of the DMCA notice and takedown system.

The initial meeting will focus on identifying discrete topics to be addressed through the multistakeholder forum. We also intend to discuss and make decisions about the process for the forum's ongoing work. The Task Force wants to ensure participation by a wide variety of the notice and takedown system's current users, including right holders and individual creators, service providers, and any other stakeholders that are directly affected—such as consumer and public interest representatives, technical and engineering experts, and companies in the business of identifying infringing content. The Department's role in the open multistakeholder process will be to provide a forum for discussion and consensus-building among stakeholders. Stakeholder groups convened for this process will not be advisory committees to the government, as neither the Department of Commerce nor any other Federal agency or office will seek advice or recommendations on policy issues from participants. Subsequent meetings will take place approximately every six weeks, alternating between the USPTO main campus and Silicon Valley, at a location to be announced. These meetings will be webcast.

Future Roundtable Discussions

The Department of Commerce will also be hosting roundtable discussions on three additional issues identified in the Green Paper—remixes, first sale, and statutory damages—in several cities over the next few months. Further details will be announced in an upcoming **Federal Register** notice, on the USPTO and Task Force Web sites, and through the USPTO's Copyright Alerts subscription, which can be found at *enews.uspto.gov.*

Public Meeting

On March 20, 2014, the Task Force will hold an initial public meeting of this multistakeholder forum aimed at improving the operation of the notice and takedown system for removing infringing content from the Internet under the Digital Millennium Copyright Act (DMCA).

The meeting will be webcast. The agenda and webcast information will be available on the Internet Policy Task Force Web site, *http://www.ntia.doc.gov/internetpolicytaskforce* and the USPTO's Web site, *http://www.uspto.gov/ip/global/copyrights/index.jsp.*

The meeting will be open to members of the public to attend, space permitting, on a first-come, first-served basis. Members of the public can RSVP at *http://events.Signup4.com/copyrightgreenpaper.* The meeting will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation, real-time captioning of the webcast or other ancillary aids, should communicate their needs to Hollis Robinson, Office of Policy and International Affairs, United States Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272–9300; email *hollis.robinson@uspto.gov* at least seven (7) business days prior to the meeting. Attendees should arrive at least one-half hour prior to the start of the meeting, and must present valid government-issued photo identification upon arrival.

Dated: March 5, 2014.

Michelle K. Lee,

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

Lawrence E. Strickling,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 2014–05159 Filed 3–10–14; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0029]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Finance and Accounting Service is amending a system of records notice, T–7305, entitled "Departmental Cash Management System (DCMS) Records" in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. This system manages and reconciles cash disbursements, reimbursements, collections, and receipts department-wide.

DATES: Comments will be accepted on or before April 10, 2014. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Outlaw, (317) 510–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.* The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 5, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T–7305

SYSTEM NAME:

Departmental Cash Management System (DCMS) Records (October 1, 2008, 73 FR 57067)

CHANGES:

SYSTEM ID:

Delete entry and replace with "T7305."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Defense Information Systems Agency, Defense Enterprise Computing Center, Ogden, 7879 Wardleigh Road, Hill Air Force Base, Utah 84058–5997.

Defense Information Systems Agency, Defense Enterprise Computing Center, Mechanicsburg, Bldg 308, Naval Support Activity (NSA), 5450 Carlisle Pike, Mechanicsburg, PA 17050–2411.

Defense Finance and Accounting Service, DFAS-Limestone, 27 Arkansas Road, Limestone, ME 04751–1500.

Defense Finance and Accounting Service, DFAS-Japan, Building 206 Unit 5220, APO AP 96328–5220.

Defense Finance and Accounting Service, DFAS-Columbus, 3990 East Broad St, Columbus, OH 43213–1152.

Defense Finance and Accounting Service, DFAS-Indianapolis, 8899 East 56TH Street, Indianapolis, IN 46249–0100.

Secretary of the Air Force, SAF/FMBMB–AFO, 201 12TH Street Suite 512B, Arlington, VA 22202–5408."

Categories of individuals covered by the system:

Delete entry and replace with "United States Air Force (USAF), Army, Navy, Marine Corps, active, reserve, and guard members and National Geospatial-Intelligence Agency civilian employees, Department of Defense (DoD) civilian employees, paid by appropriated funds and whose pay is processed by the Defense Finance and Accounting Service."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is limited to CAC enabled users and restricted by passwords, which are changed according to agency security policy."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "DCMS System Manager, Defense Finance and Accounting Service-Columbus, 3390 East Broad Street, Columbus, OH 43213–1152."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN for verification, current address for reply, and provide a reasonable description of what they are seeking."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN for verification, current address for reply, and telephone number."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150."

* * * * *

[FR Doc. 2014–05155 Filed 3–10–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the USMA Board of Visitors (BoV). This meeting is open to the public. For more information about the BoV, its membership and its activities, please visit the BoV Web site at *http://www.usma.edu/bov/SitePages/Home.aspx.*

DATES: The USMA BoV will meet from 1:30 p.m. until 3:30 p.m. on Wednesday, March 31, 2014. Members of the public wishing to attend the meeting will be required to show a government photo ID upon entering West Point and in order to gain access to the meeting location. All members of the public are subject to security screening.

ADDRESSES: The meeting will be held in the Haig Room, Jefferson Hall, West Point, NY 10996.

FOR FURTHER INFORMATION CONTACT: Mrs. Deadra K. Ghostlaw, the Designated Federal Officer for the committee, in writing to: Secretary of the General Staff, ATTN: Deadra K. Ghostlaw, 646 Swift Road West Point, NY 10996, by email at *deadra.ghostlaw@usma.edu* or *BoV@usma.edu* or by telephone at (845) 938–4200.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: This is the 2014 Organizational Meeting of the USMA BoV. Members of the Board will be provided updates on Academy issues.

Proposed Agenda: The Academy leadership will provide the Board with updates on the following matters: Election of 2014 committee Chair and Vice Chair, 2013 Annual Report Update, Federal Advisory Committee Act Final Rule. Further, the Board will be provided updates on the status of Cadet Barracks, the USMA Sexual Harassment and Assault Response Program (SHARP), the Cadets Against Sexual Harassment and Assault (CASH/A) program, Academy Admissions, and

Academics. Finally, the USMA Superintendent and USMA Chief of Staff will brief the Board.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their, name, affiliation, and daytime phone number seven business days prior to the meeting to Mrs. Ghostlaw, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public attending the committee meeting will not be permitted to present questions from the floor or speak to any issue under consideration by the committee. Because the meeting of the committee will be held in a Federal Government facility on a military post, security screening is required. A government photo ID is required to enter post. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. The United States Military Academy, Jefferson Hall, is fully handicap accessible. Wheelchair access is available at the south entrance of the building. For additional information about public access procedures, contact Mrs. Ghostlaw, the committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mrs. Ghostlaw, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Official at least seven business days prior to the meeting to be considered by the committee. The Designated Federal Official will review all timely submitted written comments or statements with the committee Chairperson, and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date may not be provided to the committee until its next meeting. The committee Designated Federal Official and Chairperson may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the committee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–05211 Filed 3–10–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0032]

Agency Information Collection Activities; Comment Request; EDGAR Recordkeeping and Reporting Requirements

AGENCY: Office of the Secretary/Office of the Deputy Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 12, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0032 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Alfreida Pettiford, 202–245–6110.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: EDGAR Recordkeeping and Reporting Requirements.

OMB Control Number: 1894–0009.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector, State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 4,988.

Total Estimated Number of Annual Burden Hours: 22,448.

Abstract: The Education Department General Administrative Regulations (EDGAR) contains several requirements that grantees maintain certain types of records related to their grants and to report or submit certain information to the Department. Part 74 of EDGAR applies to Institutions of Higher Education, nonprofit organizations, and hospitals. Additionally, under 34 CFR 75.261, all types of grantees including State Educational Agencies, Local Educational Agencies, and Federally Recognized Indian Tribal Governments may follow the regulations in 34 CFR

74.25 (e)(2) regarding extension of a project period. Section 74.25 (e)(2) allows grantees to initiate a one-time extension of their projects' expiration date of up to 12 months without prior approval from the Department of Education. These grantee requirements are necessary for the effective administration and monitoring of grant projects.

Dated: March 6, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–05232 Filed 3–10–14; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9907–64–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 2484.01; Willingness To Pay Survey for Santa Cruz River Management Options in Southern Arizona (New); was approved on 02/05/2014; OMB Number 2080–0080; expires on 02/28/2015; Approved with change.

EPA ICR Number 2487.01; EPA's Design for the Environment (DfE) Logo Redesign Consultations; was approved on 02/05/2014; OMB Number 2070–0189; expires on 02/28/2017; Approved with change.

EPA ICR Number 2288.02; Pesticides Data Call In Program; 40 CFR parts 150–189; was approved on 02/05/2014; OMB Number 2070–0174; expires on 02/28/2017; Approved without change.

EPA ICR Number 2185.05; State Review Framework; 40 CFR 70.4, 123.41 and 271.17(a); was approved on 02/11/2014; OMB Number 2020–0031; expires on 02/28/2017; Approved with change.

EPA ICR Number 0116.10; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal); 40 CFR part 85 subpart V; was approved on 02/11/2014; OMB Number 2060–0060; expires on 02/28/2017; Approved without change.

EPA ICR Number 2412.02; Electronic Reporting of TSCA Section 4, Section 5 NOC and Supporting Documents, 8(a) Preliminary Assessment Information Rule (PAIR), and 8(d) Submissions; 40 CFR parts 712, 716, 720, 725 and 790; was approved on 02/25/2014; OMB Number 2070–0183; expires on 02/28/2017; Approved without change.

EPA ICR Number 1665.12; Confidentiality Rules (Renewal); 40 CFR part 2 subparts A and B; was approved on 02/25/2014; OMB Number 2020–0003; expires on 02/28/2017; Approved without change.

EPA ICR Number 0657.11; NSPS for Graphic Arts Industry; 40 CFR part 60 subparts A and QQ; was approved on 02/27/2014; OMB Number 2060–0105; expires on 02/28/2017; Approved without change.

EPA ICR Number 0794.13; Notification of Substantial Risk of Injury to Health and the Environment under TSCA Section 8(e); was approved on 02/27/2014; OMB Number 2070–0046; expires on 02/28/2017; Approved with change.

Comment Filed

EPA ICR Number 1869.08; NESHAP for the Manufacture of Amino/Phenolic Resins; in 40 CFR 63.1400–63.1419; and 40 CFR part 63 subpart A; OMB filed comment on 02/27/2014.

EPA ICR Number 1871.07; NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards; in 40 CFR 63.1100–63.1114; and 40 CFR part 63 subpart A; OMB filed comment on 02/27/2014.

Richard T. Westlund,

Acting Director, Collections Strategies Division.

[FR Doc. 2014–05218 Filed 3–10–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0303; FRL–9907–20–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Equipment Leaks of VOC in Petroleum Refineries (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Equipment Leaks of VOC in Petroleum Refineries (40 CFR Part 60, Subparts GGG and GGGa) (Renewal)" (EPA ICR No. 0983.14, OMB Control No.2060–0067), 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 April 30, 2014. Public comments were previously requested via the **Federal Register** (78 *FR* 35023) on June 11, 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 April 10, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0303, 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: Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to Equipment Leaks of VOC in Petroleum Refineries provide information on which components are leaking VOCs. NSPS Subpart GGG references the compliance requirements of NSPS subpart VV; and NSPS subpart GGGa references the compliance requirements of NSPS subpart VVa. Periodically, owners or operators are required to record information identifying leaking equipment, repair methods used to stop the leaks, and dates of repair. The time period for this recordkeeping varies and depends on equipment type and leak history. Semiannual reports are required to measure compliance with the standards of NSPS Subparts VV and VVa, as referenced by NSPS subparts GGG and GGGa. These notifications, reports, and records are essential in determining compliance and in general, are required of all sources subject to NSPS. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

Form Numbers: None.

Respondents/affected entities: Petroleum refineries.

Respondent's obligation to respond: Mandatory (40 CFR part 60, Subparts GGG and GGGa).

Estimated number of respondents: 130.

Frequency of response: Initially and semiannually.

Total estimated burden: 24,886 hours (per year). "Burden" is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,434,325 (per year), including no annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There are several changes to the estimated burden as currently identified in the OMB Inventory of Approved Burdens. These differences are not due to any program changes. There is a decrease in the respondent and Agency burden for subpart GGG due to a correction of the number of respondents from 135 to 130. In addition, there is an increase in the respondent burden for subpart GGGa due to a mathematical correction. The previous ICR incorrectly calculated the amount of time it would take to record operating parameters at large and small refineries for subpart GGGa. This ICR also updates all burden costs to reflect current labor rates. These changes result in an overall increase in respondent burden and a decrease in Agency burden for both subparts combined.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–05216 Filed 3–10–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0350; FRL–9907–44–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; The Consolidated Air Rule (CAR) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "The Consolidated Air Rule (CAR) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (Renewal)" (EPA ICR No. 1854.09, OMB Control No. 2060–0443), 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 April 30, 2014. Public comments were previously requested via the **Federal Register** (78 *FR* 35023) on June 11, 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 April 10, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0350, to: (1) EPA online using *www.regulations.gov* (our preferred method), or 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: The synthetic organic chemical manufacturing industry (SOCMI) is regulated by both the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) standards. The affected entities are

subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes or additions to the Provisions specified at 40 CFR part 60, subparts Ka, Kb, VV, VVa, DDD, III, NNN and RRR. The affected entities are also subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subparts BB, Y, V, F, G, H and I. As an alternative, SOCMI sources may choose to comply with the above standards under the consolidated air rule (CAR) at 40 CFR part 65 as promulgated December 14, 2000. Synthetic organic chemical manufacturing facilities subject to NSPS requirements must notify EPA of construction, modification, startups, shutdowns, date and results of initial performance test and excess emissions. Semiannual reports are also required. Synthetic organic chemical manufacturing facilities subject to NESHAP requirements must submit one-time-only reports of any physical or operational changes and the results of initial performance tests. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Periodic reports are also required semiannually at a minimum.

Form Numbers: None.

Respondents/affected entities: Owners or operators of synthetic organic chemical manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart A, Ka, Kb, VV, VVa, DDD, III, NNN and RRR; and 40 CFR part 63, subpart A, BB, Y, V, F, G, H and I).

Estimated number of respondents: 4,618 (total).

Frequency of response: Initially, occasionally, semiannually and annually.

Total estimated burden: 2,130,669 hours (per year). "Burden" is defined at 5 CFR 1320.3(b).

Total estimated cost: $309,692,801 (per year), which includes $101,277,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an increase in the total estimated respondent labor burden and associated labor, capital/startup, and O&M costs. Overall, the change in burden from the most recently approved ICR is due to an increase in the number of sources subject to the standard, and is not due to any program changes. The number of sources has been increased to reflect industry growth, which in turn increased the cost of those subparts where growth is expected.

There is a further overall increase in respondent burden costs from the most recently approved ICR due to the use of updated labor rates. This ICR references labor rates from the Bureau of Labor Statistics to calculate respondent burden costs. Note that this ICR also references labor rates from OPM to calculate Agency costs; however, the update did not affect Agency costs since the rates are identical between this and the most recently-approved ICR.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–05217 Filed 3–10–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9907–70–OA]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held April 9 and 10, 2014 at National Archives Museum (700 Pennsylvania Avenue NW., Washington, DC 20408). The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The CHPAC will meet April 9 and 10, 2014.

ADDRESSES: 700 Pennsylvania Avenue NW., Washington, DC 20408

FOR FURTHER INFORMATION CONTACT: Martha Berger, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 564–2191 or *berger.martha@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The CHPAC will meet on April 9, and April 10 from 9:00 a.m. to 4:00 p.m. each day. The Agenda will be posted at *epa.gov/children.*

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Martha Berger at 202–564–2191 or *berger.martha@epa.gov.*

Dated: February 18, 2014.

Martha P. Berger,

Designated Federal Official.

[FR Doc. 2014–05219 Filed 3–10–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9907–71–Region 4; CERCLA–04–2014–3755]

Ecusta Mill Superfund Site, Pisgah Forest, Transylvania County, North Carolina; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with the P.H. Glatfelter Company concerning the Ecusta Mill Superfund Site located in Pisgah Forest, Transylvania County, North Carolina. The settlement addresses remaining costs from a fund-lead Removal Action taken by the EPA at the Site.

DATES: The Agency will consider public comments on the settlement until April 10, 2014. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the amended settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Environmental Protection Specialist using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

- Internet: *www.epa.gov/region4/superfund/programs/enforcement/enforcement.html.*
- U.S. Mail: U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW., Atlanta, Georgia 30303.
- Email: *Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887

Dated: January 27, 2014.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2014–05292 Filed 3–10–14; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 13, 2014, from 9 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- February 13, 2014

B. New Business

- Advisory Votes—Interim Final Rule

C. Reports

- Report on the Farm Credit System's Funding Conditions

Dated: March 6, 2014.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2014–05294 Filed 3–7–14; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: March 5, 2014.

Pamela Johnson,

Regulatory Editing Specialist, Federal Deposit Insurance Corporation.

INSTITUTIONS IN LIQUIDATION

[In Alphabetical Order]

FDIC Ref. No.	Bank name	City	State	Date closed
10495	Millennium Bank, National Association	Sterling	VA	2/28/2014
10496	Vantage Point Bank	Horsham	PA	2/28/2014

[FR Doc. 2014–05194 Filed 3–10–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

DATE AND TIME: *Tuesday March 11, 2014 at 11:00 a.m.*

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary.

[FR Doc. 2014–05295 Filed 3–7–14; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL TRADE COMMISSION

[File No. 122 3121]

ADT LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 7, 2014.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/adtconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "ADT LLC—Consent Agreement; File No. 1223121" on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/adtconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michelle Rusk, Bureau of Consumer Protection, (202–326–3148), 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 6, 2014), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 7, 2014. Write "ADT LLC—Consent Agreement; File No. 1223121" on your comment. Your comment—including your name and your state will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm*. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/adtconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write "ADT LLC—Consent Agreement; File No. 1223121" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 7, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from ADT LLC, also doing business as ADT Security Services ("ADT").

The proposed consent order ("proposed order") has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves ADT's use of paid spokespersons to promote the ADT Pulse home security system in appearances on national and local television and radio news programs and talk shows. The Commission's complaint alleges that the paid spokespersons were identified on air as experts in child safety, home security, or technology. The experts demonstrated and provided favorable reviews of the ADT Pulse as part of news segments on topics related to their expertise. In most of these appearances, there was no mention of any connection between the experts and ADT. The complaint also alleges that ADT used these paid spokespersons to promote the ADT Pulse in what appeared to be independent and objective reviews on the spokesperson's own Web site, in blog posts, and in other online materials. The complaint alleges that ADT violated Section 5 by misrepresenting that the demonstrations and discussions of the features and benefits of the ADT Pulse were independent reviews by impartial experts. The complaint further alleges that ADT violated Section 5 by failing

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

to disclose that the experts were ADT's paid spokespersons.

The proposed order includes injunctive relief to address these alleged violations and requires ADT to follow certain monitoring and compliance procedures related to its use of paid spokespersons.

Part I of the proposed order prohibits ADT, in connection with the advertising of any security or monitoring product or service, from misrepresenting that a discussion or demonstration of such product or service is an independent review provided by an impartial expert.

Part II of the proposed order requires ADT, in connection with the advertising of any security or monitoring product by means of an endorsement, to disclose clearly and prominently a material connection, if one exists, between the endorser and ADT.

Part III of the proposed order requires ADT to take all reasonable steps to remove, within seven days of service of the order, any demonstration, review, or endorsement, by an endorser with a material connection to ADT, that does not comply with Parts I and II of the order.

Part IV of the proposed order sets out certain monitoring and compliance obligations that ADT must meet with respect to any endorser with a material connection to ADT, including: obtaining signed acknowledgements from such endorsers that they will disclose their connection to ADT; monitoring the endorsers' media appearances and online reviews; terminating endorsers who fail to disclose their connection to ADT; and maintaining records of its monitoring efforts.

Parts V through VIII of the proposed order require ADT to: Keep copies of relevant consumer complaints and inquiries and documents demonstrating order compliance; provide copies of the order to officers, employees, and others with responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part IX provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–05262 Filed 3–10–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HHS Approval of Entities That Certify Medical Review Officers (MRO)

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The current version of the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines), effective on October 1, 2010, addresses the role and qualifications of Medical Review Officers (MROs) and HHS approval of entities that certify MROs.

Subpart M-Medical Review Officer (MRO), Section 13.1(b), "Who may serve as an MRO?" states as follows: "Nationally recognized entities that certify MROs or subspecialty boards for physicians performing a review of Federal employee drug testing results that seek approval by the Secretary must submit their qualifications and a sample examination. Based on an annual objective review of the qualifications and content of the examination, the Secretary shall publish a list in the **Federal Register** of those entities and boards that have been approved."

HHS has completed its review of entities that train and certify MROs, in accordance with requests submitted by such entities to HHS.

(1) The HHS Secretary approves the following MRO certifying entities that offer both MRO training and certification through examination:

American Association of Medical Review Officers (AAMRO), P.O. Box 12873, Research Triangle Park, NC 27709, Phone: (800) 489–1839, Fax: (919) 490–1010, Email: *cferrell@aamro.com,* Web site: *http://www.aamro.com/.*

Medical Review Officer Certification Council (MROCC), 836 Arlington Heights Road, #327, Elk Grove Village, IL 60007, Phone: (847) 631–0599, Fax: (847) 483–1282, Email: *mrocc@mrocc.org,* Web site: *http://www.mrocc.org/.*

(2) The HHS Secretary lists the following entities that offer MRO training as a prerequisite for MRO certification:

American College of Occupational and Environmental Medicine (ACOEM), 25 Northwest Point Boulevard, Suite 700, Elk Grove Village, IL 60007–1030, Phone: (847) 818–1800, Fax: (847) 818–9266, Contact Form: *http://www.acoem.org/contactacoem.aspx,* Web site: *http://www.acoem.org/.*

American Society of Addiction Medicine (ASAM), 4601 N. Park Avenue, Upper Arcade #101, Chevy Chase, MD 20815, Phone: (301) 656–3920, Fax: (301) 656–3815, Email: *email@asam.org,* Web site: *http://www.asam.org/.*

DATES: HHS approval is effective March 11, 2014.

FOR FURTHER INFORMATION CONTACT: Jennifer Fan, Pharm.D., J.D., Division of Workplace Programs (DWP), Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), 1 Choke Cherry Road, Room 7–1038, Rockville, MD 20857; Telephone: (240) 276–1759; Email: *jennifer.fan@samhsa.hhs.gov*

Dated: February 27, 2014.

Kathleen Sebelius,

Secretary.

[FR Doc. 2014–05283 Filed 3–10–14; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–14–0896]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to LeRoy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Community-based Organization (CBO) Monitoring and Evaluation of WILLOW (CMEP–WILLOW) (0920–0896 Exp. 8/31/2014)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC began formally partnering with CBOs in the late 1980s to expand the reach of HIV prevention efforts. CBOs were, and continue to be, recognized as important partners in HIV prevention because of their history and credibility with target populations and their access to groups that may not be easily reached. Over time, CDC's program for HIV prevention by CBOs has grown in size, scope, and complexity to respond to changes in the epidemic, including the diffusion and implementation of Effective Behavioral Interventions (EBIs) for HIV prevention.

CDC's EBIs have been shown to be effective under controlled research environments, but there is limited data on intervention implementation and client outcomes in real-world settings (as implemented by CDC-funded CBOs). The purpose of CMEP–WILLOW is to (a) assess the fidelity of the implementation of the selected intervention at the CBO; and (b) improve the performance of CDC-funded CBOs delivering the WILLOW intervention by monitoring changes in clients' self-reported attitudes and beliefs regarding HIV and HIV transmission risk behaviors after participating in WILLOW.

CDC funded four (4) CBOs to participate in CMEP–WILLOW for five (5) years (September 2010-August 2015). From September 1, 2012 through January 31, 2014, baseline surveys were conducted with 825 participants; 90-day follow up surveys were completed with 566 participants, and 180-day follow up surveys were completed with 463 participants.

CDC is requesting additional time to complete follow up surveys at 90- and 180-days for participants completing the intervention on or before 8/31/2014. Following their participation in the WILLOW intervention, participants will complete an 18-minute, self-administered, computer-based interview at two follow-up time points (90- and 180-days following the WILLOW intervention) to assess their HIV-related attitudes and behavioral risks. CBOs will be expected to retain 80% of these participants at both follow-up interviews.

Throughout the project, funded CBOs will be responsible for managing the daily procedures of CMEP–WILLOW to ensure that all required activities are performed, all deadlines are met, and quality assurance plans, policies and procedures are upheld. CBOs will be responsible for participating in all CDC-sponsored grantee meetings related to CMEP–WILLOW.

Findings from this project will be primarily used by the participating CBOs. The CBOs may use the findings to (a) better understand if the outcomes are different across demographic and behavioral risk groups as well as agency and program model characteristics; (b) improve the future implementation, management, and quality of WILLOW; and (c) guide their overall HIV prevention programming for women living with HIV. CDC and other organizations interested in behavioral outcome monitoring of WILLOW or similar HIV prevention interventions can also benefit from lessons learned through this project.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden response (in hours)	Total burden (in hours)
General population	90-day Follow-up Survey.	320	1	18/60	96
CMEP–WILLOW grantees	90-day SDN Submission.	4	12	5/60	4
General population	180-day Follow-up Survey.	320	1	18/60	96
CMEP–WILLOW grantees	180-day SDN Submission.	4	12	5/60	4
Total					200

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–05231 Filed 3–10–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Dates and Times:

April 1, 2014, 10:30 a.m.–5:00 p.m. EST
April 2, 2014, 10:30 a.m.–5:00 p.m. EST

Place: Audio Conference Call via FTS Conferencing.

Status: Open to the public. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number, 1–866–659–0537 and the passcode is 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2015.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters For Discussion: The agenda for the Subcommittee meeting includes the following dose reconstruction program quality management and assurance activities: Discussion of current findings from NIOSH and Advisory Board dose reconstruction blind reviews; discussion of dose reconstruction cases under review (set 9, and cases involving Portsmouth, Hanford, Oak Ridge National Laboratory, Y–12, K–25, and other DOE and Atomic Weapons Employer sites from sets 10–13); and preparation of the Advisory Board's next report to the Secretary, HHS, summarizing the results of completed dose reconstruction reviews.

The agenda is subject to change as priorities dictate.

Contact Person For More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–05183 Filed 3–10–14; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response (BSC, OPHPR)

In accordance with section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

10:00 a.m.–5:15 p.m., EST, April 7, 2014
8:00 a.m.–3:15 p.m., EST, April 8, 2013

Place: CDC, 1600 Clifton Road NE., Roybal Campus, Building 19, Auditorium B3, Atlanta, Georgia 30329

Status: Open to the public limited only by the space available. The meeting room will accommodate up to 90 people. Public participants should pre-register for the meeting as described in Additional Information for Public Participants. Members of the public who wish to attend this meeting should pre-register by submitting the following information by email, facsimile, or phone (see Contact Person for More Information) no later than 12:00 noon (EDT) on Monday, March 31, 2014:

- Full Name,
- Organizational Affiliation,
- Complete Mailing Address,
- Citizenship, and
- Phone Number or Email Address

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review of OPHPR scientific programs. For additional information about the Board, please visit: *http://www.cdc.gov/phpr/science/counselors.htm*

Matters for Discussion: The agenda items for this 2-day meeting will include: (1) briefings and BSC deliberation on the following topics: Program response to recommendations made in the Joint Report from the National Biodefense Science Board and the OPHPR BSC; program response to recommendations made in the peer review of the Career Epidemiology Field Officer Program; Hurricane Sandy Research; community approaches to healthcare preparedness; National Health Security Preparedness Index Update; resilience research; global health security; systems thinking in disaster management; scientific applications in disaster management; (2) BSC liaison representative updates to the Board highlighting organizational activities relevant to the OPHPR mission.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Marquita Black, Office of Science and Public Health Practice Executive Assistant, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop D–44, Atlanta, Georgia 30333, Telephone: (404) 639–7325; Facsimile: (404) 639–7977; Email: *OPHPR.BSC.Questions@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–05182 Filed 3–10–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Information Comparison with Insurance Data

OMB No.: 0970–0342

Description: The Deficit Reduction Act of 2005 amended Section 452 of the Social Security Act (the Act) to authorize the Secretary, through the Federal Parent Locator Service (FPLS), to conduct comparisons of information concerning individuals owing past-due child support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments. Public Law 109–171, § 7306.

The insurer may choose to conduct the data comparison by either of the following methods. Under the first method, an insurer or the insurer's agent will submit to OCSE information concerning claims, settlements, awards, and payments. OCSE will then compare that information with information pertaining to individuals owing past-due support.

Under the second method, OCSE will send to the insurer or the insurer's agent a file containing information pertaining to individuals owing past-due support. The insurer or the insurer's agent will compare that information with information pertaining to claims, settlements, awards, and payments. The insurer will then send the information resulting from the comparison to OCSE.

On a daily basis, OCSE will send the results of a comparison to the state agencies responsible for collecting child support from the individuals by transmitting the Insurance Match Response Record. The results of the comparison will be used by the State agencies to collect from the insurance proceeds past-due child support owed by the individuals.

This information collection is authorized by: (1) 42 U.S.C. 652(a)(9) which requires the federal Office of Child Support Enforcement (OCSE) to operate the FPLS established by 42 U.S.C. 653(a)(1); 42 U.S.C. 652(l) (to be redesignated (m)) which authorizes OCSE, through the FPLS to compare information concerning individuals owing past-due support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments, and to furnish information resulting from the data matches to the state child support agencies responsible for collecting child support from the individuals.

Respondents: Insurers or their agents, including the U.S. Department of Labor and state agencies administering workers' compensation programs, and the Insurance Services Office (ISO).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Insurance Match File	22	12	0.50	132

Estimated Total Annual Burden Hours: 132.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–05195 Filed 3–10–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0008]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Citizen Petitions and Petitions for Stay of Action Subject to the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 10, 2014.

ADDRESSES: 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: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0679. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act—(OMB Control Number 0910–0679)—Extension

In the **Federal Register** of June 8, 2011 (76 FR 33309), FDA announced the availability of a guidance for industry entitled "Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act." The guidance provides information regarding FDA's current thinking on interpreting section 914 of Title IX of the Food and Drug Administration Amendments Act (FDAAA) (Pub. L. 110–85). Section 914 of FDAAA added new section 505(q) to the FD&C Act (21 U.S.C. 355(q)) and governs certain citizen petitions and petitions for stay of agency action that request that FDA take any form of action related to a pending application submitted under section 505(b)(2) or 505(j) (21 U.S.C. 355(b)(2) or 21 U.S.C. 355(j)) of the FD&C Act. The guidance describes FDA's interpretation of section 505(q) of the FD&C Act regarding how the Agency will determine if: (1) The provisions of section 505(q) addressing the treatment of citizen petitions and petitions for stay of agency action (collectively, petitions) apply to a particular petition and (2) a petition would delay approval of a pending abbreviated new drug application (ANDA) or a section 505(b)(2) application. The guidance also describes how FDA will interpret the provisions of section 505(q) requiring that: (1) A petition includes a certification and (2) supplemental information or comments to a petition include a verification. Finally, the guidance addresses the relationship between the review of petitions and pending ANDAs and section 505(b)(2) applications for which the Agency has not yet made a decision on approvability.

The Food and Drug Administration Safety and Innovation Act (FDASIA) was signed into law on July 9, 2012 (Pub. L. 112–144, 126 Stat. 993). Section 1135 of FDASIA amended section 505(q) of the FD&C Act in two ways. First, it shortened FDA's deadline from 180 days to 150 days for responding to petitions subject to section 505(q) of the FD&C Act. Second, it expanded the scope of section 505(q) of the FD&C Act to include certain petitions concerning applications submitted under section 351(k) of the Public Health Service Act (42 U.S.C. 262), the abbreviated pathway for the approval of biosimilar biological products. Accordingly, we are now including submissions pertaining to biosimilar biological product applications in the information collection burden estimates in this document.

Section 505(q)(1)(H) of the FD&C Act requires that citizen petitions and petitions for stay of agency action that are subject to section 505(q) include a certification to be considered for review by FDA. Section 505(q)(1)(I) of the FD&C Act requires that supplemental information or comments to such citizen petitions and petitions for stay of agency action include a verification to be accepted for review by FDA. The guidance sets forth the criteria the Agency will use in determining if the provisions of section 505(q) of the FD&C Act apply to a particular citizen petition or petition for stay of agency action. The guidance states that one of the criteria for a citizen petition or petition for stay of agency action to be subject to section 505(q) of the FD&C Act is that a related ANDA or section 505(b)(2) application is pending at the time the citizen petition or petition for stay is submitted. Because petitioners or commenters may not be aware of the existence of a pending ANDA or section 505(b)(2) application, the guidance recommends that all petitioners challenging the approvability of a possible ANDA or section 505(b)(2) application include the certification required in section 505(q)(1)(H) of the FD&C Act and that petitioners and commenters submitting supplements or comments, respectively, to a citizen petition or petition for stay of action challenging the approvability of a possible ANDA or section 505(b)(2) application include the verification required in section 505(q)(1)(I) of the FD&C Act. The guidance also recommends that if a petitioner submits a citizen petition or petition for stay of agency action that is missing the required certification but is otherwise within the scope of section 505(q) of the FD&C Act and the petitioner would like FDA to review the citizen petition or petition for stay of agency action, the petitioner should submit a letter withdrawing the deficient petition and submit a new petition that contains the required certification.

FDA currently has OMB approval for the collection of information entitled "General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions" (OMB control number 0910–0183). This collection of information includes, among other things: (1) The format and procedures by which an interested person may submit to FDA, in accordance with § 10.20 (21 CFR 10.20), a citizen petition requesting the Commissioner of Food and Drugs (Commissioner) to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action (§ 10.30(b) (21 CFR 10.30(b))); (2) the submission of written comments on a filed citizen petition (§ 10.30(d)); (3) the submission of a supplement or amendment to or a letter to withdraw a filed citizen petition (§ 10.30(g)); (4) the format and procedures by which an interested person may request, in accordance with § 10.20, the Commissioner to stay the effective date of any administrative action (§ 10.35(b) (21 CFR 10.35(b))); and (5) the submission of written comments on a filed petition for administrative stay of action (§ 10.35(c)). This information collection includes citizen petitions, petitions for administrative stay of action, comments to petitions, supplements to citizen petitions, and letters to withdraw a citizen petition, as described previously in this document, which are subject to section 505(q) of the FD&C Act and described in the guidance.

We are requesting OMB approval for the following collection of information submitted to FDA under section 505(q) of the FD&C Act and the guidance:

1. The certification required under section 505(q)(1)(H) of the FD&C Act for citizen petitions that are subject to section 505(q) and/or that are challenging the approvability of a possible ANDA, section 505(b)(2) application, or biosimilar biological product application. Although the submission of a certification for citizen petitions is approved under OMB control number 0910–0183, the certification would be broadened under section 505(q) of the FD&C Act and the guidance.

2. The certification required under section 505(q)(1)(H) of the FD&C Act for petitions for stay of agency action that are subject to section 505(q) and/or that are challenging the approvability of a possible ANDA, section 505(b)(2) application, or biosimilar biological product application.

3. The verification required under section 505(q)(1)(I) of the FD&C Act for comments to citizen petitions.

4. The verification required under section 505(q)(1)(I) of the FD&C Act for comments to petitions for stay of agency action.

5. The verification required under section 505(q)(1)(I) of the FD&C Act for supplements to citizen petitions.

6. Supplements to petitions for stay of agency action.

7. The verification required under section 505(q)(1)(I) of the FD&C Act for supplements to petitions for stay of agency action.

8. The letter submitted by a petitioner withdrawing a deficient petition for stay of agency action that is missing the required certification but is otherwise within the scope of section 505(q) of the FD&C Act.

Section 505(q)(1)(B) and (C) of the FD&C Act and the guidance state that if FDA determines that a delay in approval of an ANDA, section 505(b)(2) application, or biosimilar biological product application is necessary based on a petition subject to section 505(q), the applicant may submit to the petition docket clarifications or additional data to allow FDA to review the petition promptly. This information collection is not included in this analysis because it is approved under OMB control number 0910–0001.

In the **Federal Register** of October 1, 2013 (78 FR 60288), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received that pertained to the information collection analysis.

Based on FDA's knowledge of citizen petitions and petitions for stay of agency action subject to section 505(q) of the FD&C Act that have been submitted to FDA, as well as the Agency's familiarity with the time needed to prepare a supplement, a certification, and a verification, FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Certification for citizen petitions (505(q)(1)(H))	26	1.15	32	0.5 (30 min.)	16
Certification for petitions for stay of agency action (505(q)(1)(H))	1	1	1	0.5 (30 min.)	0.5
Verification for comments to citizen petitions (505(q)(1)(I))	9	1.33	12	0.5 (30 min.)	6
Verification for comments to petitions for stay of agency action (505(q)(1)(I))	1	1	1	0.5 (30 min.)	0.5
Verification for supplements to citizen petitions (505(q)(1)(I))	7	1.43	10	0.5 (30 min.)	5
Supplements to petitions for stay of agency action	1	1	1	6	6
Verification for supplements to petitions for stay of agency action (505(q)(1)(I))	1	1	1	0.5 (30 min.)	0.5
Letter withdrawing a petition for stay of agency action	1	1	1	0.5 (30 min.)	0.5
Total Hours		35			

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 5, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–05190 Filed 3–10–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0264]

Draft Guidance for Industry on Chronic Fatigue Syndrome/Myalgic Encephalomyelitis: Developing Drug Products for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Chronic Fatigue Syndrome/Myalgic Encephalomyelitis: Developing Drug Products for Treatment." The purpose of this draft guidance is to assist sponsors in the development of drug products for the treatment of chronic fatigue syndrome/myalgic encephalomyelitis (CFS/ME).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 12, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Janet Maynard, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3185, Silver Spring, MD 20993–0002, 301–796–2300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Chronic Fatigue Syndrome/Myalgic Encephalomyelitis: Developing Drug Products for Treatment." The purpose of this draft guidance is to assist sponsors in the development of drug products for the treatment of CFS/ME.

Currently, there are no approved therapies indicated to treat CFS/ME. The lack of approved therapies indicated for the treatment of CFS/ME represents a public health concern. To foster drug development in CFS/ME, this draft guidance outlines the following key issues in drug development in CFS/ME:

- The case definitions or criteria for CFS/ME that could be used to define a patient population in the context of drug development

• Recommendations for establishing efficacy in CFS/ME based on patient-reported symptoms and measurements of exercise capacity

• Recommended trial design and duration

• Recommendations for establishing safety in CFS/ME

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on developing drug products for the treatment of CFS/ME. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001.

III. 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.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm or http://www.regulations.gov.*

Dated: March 6, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–05189 Filed 3–10–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, March 17, 2014, 01:00 p.m. to March 17, 2014, 03:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on February 18, 2014, 79 FRN 9245.

The panel name has been changed to "NIMH R25 HIV/AIDS APPLICATIONS." The previous notice incorrectly listed these as "R34" applications. This meeting will remain at the same time and is closed to the public.

Dated: March 5, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05166 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research Program Project: Genome-Scale Data Analysis Review.

Date: April 2–3, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA: Endocrinology, Metabolism and Nutrition.

Date: April 3, 2014.

Time: 7:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–408–9901, *sheardn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Iron Homeostasis Regulation.

Date: April 3–4, 2014.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting),

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: March 4, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05161 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Eye Diseases #7.

Date: March 18, 2014.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: James P Harwood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vascular Biology and Hematology AREA.

Date: March 21, 2014.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology Topics II.

Date: April 2, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael H Chaitin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuropharmacology.

Date: April 2, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard D Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7850, Bethesda, MD 20892, 301–435–1220, *rc218u@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: March 5, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05164 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies.

Date: March 26, 2014.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: March 5, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05168 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel; Fellowships, Career Development and AREA grants.

Date: April 18, 2014.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 401, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Martina Schmidt, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Complementary, & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS).

Dated: March 5, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05171 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(a) 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 open to the public, with attendance limited to space

available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Contract Opportunity Concept Review—Human Laboratory Paradigms.

Date: March 17, 2014.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To provide review of contract opportunity concept.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, (Teleconference), Rockville, MD 20852.

This is an OPEN meeting. People interested in participating should contact Dr. R.V. Srinivas.

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS).

Dated: March 4, 2014.

Carolyn **A. Baum,**

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05165 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Sickle Cell Disease Diagnostics.

Date: March 26, 2014.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–496–9659, *reillymp@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Hematological Resource-Related Research Projects.

Date: March 27, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Onsite POC Tools and Technologies SBIR Review.

Date: April 2, 2014.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Onsite POC Tools and Technologies STTR Review.

Date: April 2, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: William J. Johnson, Ph.D. Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: March 5, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05172 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Muscular Dystrophy Coordinating Committee (MDCC).

The meeting will be open to the public and accessible by live webcast.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Type of meeting: Open Meeting.

Date: April 7, 2014.

Time: 8:30 a.m. to 4:30 p.m. *Eastern Time*—Approximate end time.

Agenda: The purpose of this meeting is to bring together the committee members to update one another on individual agency activities undertaken in support of the Action Plan for the Muscular Dystrophies and to (a) receive an update on research in congenital muscular dystrophy (CMD), (b) hear about a new model of interacting with regulatory agencies on developing therapies for muscular dystrophy, and (c) discuss an example of partnering in developing therapies for muscular dystrophy.

An agenda is posted to the MDCC Web site: *http://www.ninds.nih.gov/about_ninds/groups/mdcc/.*

Registration: To register, please go to: *https://meetings.ninds.nih.gov/meetings/2014_MDCC_Meeting/.*

Webcast Live: For those not able to attend in person, this meeting will be webcast at: *http://videocast.nih.gov/.*

Place: Rockledge II Building, Conference Room 9100, 6701 Rockledge Drive, Bethesda, Maryland.

Contact Person: John D. Porter, Ph.D., Executive Secretary, Muscular Dystrophy Coordinating Committee, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Boulevard, NSC 2172, Bethesda, MD 20892, (301) 496–5739, *porterjo@ninds.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the

business or professional affiliation of the interested person.

Attendance is limited to seating space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed above in advance of the meeting.

All visitors must go through a security check at the Lobby of the Rockledge II Building to receive a visitor's badge. A government issued photo ID is required.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: March 5, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05160 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: March 31, 2014.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Room 3201B, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Travis J Taylor, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Dr. MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *Travis.Taylor@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; AIDSRRC Independent SEP.

Date: April 3, 2014.

Time: 10:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3256, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Vasundhara Varthakavi, Ph.D., DVM, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3256, 6700–B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *varthakaviv@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: March 5, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05173 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Replication of Key Clinical Trials Initiative PAR–13–383.

Date: March 11, 2014.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health 5635 Fishers Lane, T508, Bethesda, MD 20892.

Contact Person: Katrina L. Foster, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2019, Rockville, MD 20852, 301–443–4032, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS).

Dated: *March 5, 2014.*

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05169 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 General Medical Sciences Special Emphasis Panel; Trauma and Burn Research Centers Review.

Date: April 4, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18, Bethesda, MD 20892, 301–594–3907, *pikbr@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: March 5, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05163 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Member Conflict SEP Teleconference ZAG1 ZIJ–7 (M2).

Date: April 4, 2014.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Ramesh Vemuri, Ph.D., Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: March 5, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05162 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Development and Neural Control in CV Diseases.

Date: April 3, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Delvin Knight, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194 MSC 4128, Bethesda, Md 20892–7814, 301.435.1850, *knightdr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Endocrinology and Metabolism.

Date: April 3, 2014.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate. grant applications

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Bleasdale, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301–435–4514, *bleasdaleje@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–13–013 Panel: Review of Perturbation-Induced Data and Signature Generation Center (U54) Applications.

Date: April 7, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–13–013 Panel: Review of Perturbation-Induced Data and Signature Generation Center (U54) Applications.

Date: April 7, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: March 5, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05170 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–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; NIMH Biobehavioral Research Awards for Innovative New Scientists (BRAINS).

Date: March 26, 2014.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: Megan Kinnane, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS).

Dated: March 5, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05167 Filed 3–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0316]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). This Council advises the Coast Guard on recreational boating safety regulations and other major boating safety matters.

DATES: Completed applications should reach the Coast Guard on or before May 12, 2014.

ADDRESSES: Applicants should send their cover letter and resume via one of the following methods:

- *By mail:* Commandant (CG–BSX–2)/ NBSAC, *Attn:* Mr. Jeff Ludwig, U.S. Coast Guard, 2703 Martin Luther King Ave. SE., Stop 7581, Washington, DC 20593–7581.
- *By email: jeffrey.a.ludwig@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Ludwig, ADFO of National Boating Safety Advisory Committee; telephone 202–372–1061 or email at *jeffrey.a.ludwig@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) is a federal advisory committee under the *Federal Advisory Committee Act,* (Pub. L. 92–463; 5 U.S.C. Appendix). It was established under authority of 46 U.S.C. 13110 and advises the Coast Guard on boating safety regulations and other major boating safety matters. NBSAC has 21 members: Seven representatives of State officials responsible for State boating safety programs, seven representatives of recreational boat manufacturers and associated equipment manufacturers, and seven representatives of national recreational boating organizations and the general public, at least five of whom are representatives of national recreational boating organizations. Members are appointed by the Secretary of the Department of Homeland Security.

The Council usually meets at least twice each year at a location selected by the Coast Guard. It may also meet for extraordinary purposes. Subcommittees or working groups may also meet to consider specific problems.

We will consider applications for seven positions that expire or become vacant on December 31, 2014:

- Three representatives of State officials responsible for State boating safety programs;
- Two representatives of recreational boat and associated equipment manufacturers; and
- Two representatives of national recreational boating organizations or the general public.

Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Appointments for the 2014 vacancies remain pending. The vacancies announced in this notice do not include the 2014 vacancies. The vacancies announced in this notice apply to membership positions that become vacant on January 1st, 2015. Applicants for the 2014 vacancies announced in the **Federal Register** on January 9, 2013, (78 FR 1865) will automatically be considered for the 2015 vacancies and do not need to submit another application. Individuals, who submitted an application for any year prior to 2014, are asked to re-submit an application if the individual wishes to apply for any of the vacancies announced in this notice.

To be eligible, you should have experience in one of the categories listed above. Registered lobbyists are not eligible to serve on Federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; as amended by Title II of Pub. L. 110–81). Each member serves for a term of three years. Members may be considered to serve consecutive terms. All members serve at their own expense and receive no salary, or other compensation from the Federal Government. The exception to this policy is when attending NBSAC meetings; members may be reimbursed for travel expenses and provided per diem in accordance with Federal Travel Regulations.

The Department of Homeland Security (DHS) does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are selected as a non-representative member or as member from the general public, you will be appointed and serve as a special Government employee (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). DHS may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the *Privacy Act* (5 U.S.C. 552a). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*www.oge.gov*) or by contacting the individual listed above in "**FOR FURTHER INFORMATION CONTACT**". Applications which are not accompanied by a completed OGE Form 450 will not be considered.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Mr. Jeff Ludwig, Alternate Designated Federal Officer (ADFO) of NBSAC by email or mail according to the instructions in the **ADDRESSES** section by the deadline in the DATES section of this notice. Indicate the specific position you request to be considered for and specify your area of expertise that qualifies you to serve on NBSAC. Note that during the vetting process, applicants may be asked to provide date of birth and social security number. All email submittals will receive email receipt confirmation.

To visit our online docket, go to *http://www.regulations.gov.* Enter the docket number for this notice (USCG–2010–0316) in the Search box, and click "Search." Please do not post your resume or OGE–450 Form on this site.

Jonathan C. Burton,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2014–05293 Filed 3–10–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: CBP Regulations Pertaining to Customs Brokers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information: 1651–0034.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act: CBP Regulations Pertaining to Customs Brokers (19 CFR part 111). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (78 FR 76851) on December 19, 2013, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 10, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street, NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: CBP Regulations Pertaining to Customs Brokers (19 CFR part 111).

OMB Number: 1651–0034.

Form Numbers: CBP Forms 3124 and 3124E.

Abstract: The information contained in Part 111 of the CBP regulations governs the licensing and conduct of customs brokers. An individual who wishes to take the broker exam must complete CBP Form 3124E, "Application for Customs Broker License Exam", or to apply for a broker license, CBP Form 3124, "Application for Customs Broker License". The procedures to request a local or national broker permit can be found in 19 CFR 111.19, and a triennial report is required under 19 CFR 111.30. This information collected from customs brokers is provided for by 19 U.S.C. 1641. CBP Forms 3124 and 3124E may be found at *http://www.cbp.gov/xp/cgov/toolbox/forms/*. Further information about the customs broker exam and how to apply for it may be found at *http://www.cbp.gov/xp/cgov/trade/trade_programs/broker/broker_exam/*.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to this collection of information.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

CBP Form 3124E, "Application for Customs Broker License Exam"

Estimated Number of Respondents: 2,300.

Estimated time per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,300.

Estimated Total Annual Cost to the Public: $460,000.

CBP Form 3124, "Application for Customs Broker License"

Estimated Number of Respondents: 300.

Estimated time per Response: 1 hour.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annual Cost to the Public: $6,000.

Triennial Report (19 CFR 111.30)

Estimated Number of Respondents: 3,833.

Estimated time per Response: 5 hours.

Estimated Total Annual Burden Hours: 1,917.

Estimated Total Annual Cost to the Public: $383,300.

National Broker Permit Application (19 CFR 111.19)

Estimated Number of Respondents: 500.

Estimated time per Response: 1 hour.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to the Public: $112,500.

Dated: March 5, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–05238 Filed 3–10–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Reinstatement of Customs Broker Licenses

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Reinstatement of customs broker licenses that were revoked.

SUMMARY: This document announces that certain customs brokers' licenses that have previously been revoked by operation of law have been reinstated and are currently active.

FOR FURTHER INFORMATION CONTACT: Craig Briess, International Trade Specialist, Broker Management Branch, Office of International Trade, (202) 863–6083.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** (76 FR 71584) on November 18, 2011, U.S. Customs and Border Protection revoked customs brokers' licenses by operation of law without prejudice pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)). The following customs brokers' licenses that were revoked in that notice have been reinstated and are currently active.

Last name	First name	License No.	Port of issuance
Resendez	Aquiles	06977	Laredo.
Galindo	Sergio	12335	Laredo.

Dated: March 6, 2014.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2014–05242 Filed 3–10–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR–2012–0003; DS63600000 DR2PS0000.PX8000 145D0102R2]

U.S. Extractive Industries Transparency Initiative Multi-Stakeholder Group (USEITI MSG) Advisory Committee

AGENCY: Policy, Management and Budget, Interior.

ACTION: Meetings.

SUMMARY: This notice announces the next four meetings of the United States Extractive Industries Transparency Initiative (USEITI) Multi-Stakeholder Group (MSG) Advisory Committee.

DATES: *Dates and Times:* All four meetings will occur on April 23–24, 2014; June 10–12, 2014; September 9–11, 2014 and November 18–20, 2014; in Washington, DC. in-person from 9:30 a.m. to 5:00 p.m. Eastern Time the first two days, and from 10:30 a.m. to 5:00 p.m. the third day unless otherwise indicated at *www.doi.gov/eiti/faca*, where agendas, meeting logistics, and meeting materials will be posted.

ADDRESSES: The meetings will be held in Room 5160 of the Main Interior Building, 1849 C Street NW., Washington, DC 20240. Members of the public may attend in person or view documents and presentations under discussion via WebEx at *http://bit.ly/1cR9W6t* and listen to the proceedings at telephone number 1–866–707–0640 (passcode: 1500538).

FOR FURTHER INFORMATION CONTACT: Rosita Compton Christian, USEITI Secretariat; 1849 C Street NW., MS–4211, Washington, DC 20240. You may also contact the USEITI Secretariat via email at *useiti@ios.doi.gov*, by phone at 202–208–0272, or by fax at 202–513–0682.

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior established the USEITI Advisory Committee (Committee) on July 26, 2012, to serve as the initial USEITI multi-stakeholder group. More information about the Committee, including its charter, can be found at *www.doi.gov/eiti/faca*.

Meeting Agenda: Agenda items for the April 23–24 meeting will include a review of the draft Terms of Reference for procuring an independent administrator for USEITI implementation. The agenda for the June 10–12 meeting will include a review and discussion of the Opt-in process for States and Tribes to participate in USEITI. The agenda for the September 9–11 meeting will include a review and discussion of the reporting template and the Department's hiring of an independent administrator. The agenda for the November 18–20 meeting will include drafting of the work-plan to meet all EITI requirements and planning for 2015.

The final agendas and materials for all meetings will be posted on the USEITI MSG Web site at *www.doi.gov/eiti/faca*. All Committee meetings are open to the public. Whenever possible, we encourage those participating by telephone to gather in conference rooms in order to share teleconference lines. Please plan to dial into the meeting and/or log-in to WebEx at least 10–15 minutes prior to the scheduled start time in order to avoid possible technical difficulties. Individuals with special needs will be accommodated whenever possible. If you require special assistance (such as an interpreter for the hearing impaired), please notify Interior staff in advance of the meeting at 202–208–0272 or via email at *useiti@ios.doi.gov*.

The minutes from these proceedings will be posted on USEITI MSG Web site at *www.doi.gov/eiti/faca* and will also be available for public inspection and copying at our office in the Main Interior Building in Washington, DC, by contacting Interior staff at *useiti@ios.doi.gov* or by telephone at 202–208–0272. For more information on USEITI, visit *www.doi.gov/eiti*.

Dated: February 26, 2014.

Amy Holley,

Chief of Staff—Policy, Management and Budget, Department of the Interior.

[FR Doc. 2014–05213 Filed 3–10–14; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2014–N025; 40120–1112–0000–F2]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given below, by *April 10, 2014.*

ADDRESSES: *Reviewing Documents:* Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Angela Romito, Permit Coordinator). *How to Submit Comments:* See Submitting Comments, under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Angela Romito, Permit Coordinator, by telephone at 404–679–7101, or by facsimile at 404–679–7081.

SUPPLEMENTARY INFORMATION:

Introduction

The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17. This notice is provided under section 10(c) of the Act.

Submitting Comments

If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES** section) or send them via electronic mail (email) to *permitsR4ES@fws.gov*. Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES**).

Public Availability of Comments

Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Applications

Permit Application Number: TE79580A

Applicant: Jason Butler, Lexington, Kentucky

The applicant requests authorization to amend his permit to take (capture, mark, apply transmitters, track, survey) the Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), gray bat (*M. grisescens*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) in Kentucky, while conducting presence/absence surveys, studies to document habitat use, and population monitoring.

Permit Application Number: TE23583B

Applicant: Holly Ober, Quincy, Florida

The applicant requests authorization to take (capture, mark, apply transmitters, track, survey) the Florida bonneted bat (*Eumops floridanus*) in Florida, while conducting presence/absence surveys, studies to document habitat use, and population monitoring.

Permit Application Number: TE171545

Applicant: Ronald K. Redman, Benton, Arkansas

The applicant requests authorization to capture, examine, and release gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*), to survey for occurrences throughout Arkansas.

Permit Application Number: TE24030B–0

Applicant: Magdalena Rodriguez, Miami, Florida

The applicant requests authorization to hold for veterinary treatment, to retain unreleasable specimens, or to euthanize specimens of Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), and loggerhead (*Caretta caretta*) sea turtles. Treatment facilities are at the Miami Seaquarium, but specimens may be accepted from authorized sources throughout Florida and other southeastern states.

Permit Application Number: TE24053B–0

Applicant: Gulf Specimen Marine Laboratory, Panacea, Florida

The applicant requests authorization to hold for veterinary treatment, tag, retain unreleasable specimens, or euthanize specimens of Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), green (*Chelonia mydas*), and loggerhead (*Caretta caretta*) sea turtles. Treatment facilities are at the Gulf Specimen Marine Laboratory, but specimens may be accepted from authorized sources throughout Florida and other southeastern states.

Permit Application Number: TE24343B

Applicant: EGIS, Inc., Bentonville, Arkansas

The applicant requests authorization to take the American burying beetle (*Nicrophorus americanus*) while surveying for its occurrence throughout Arkansas, Kansas, Missouri, and Oklahoma.

Permit Application Number: TE011542–9

Applicant: Conservation Fisheries Incorporated. Knoxville, Tennessee

The applicant requests authorization to renew their existing permit to take endangered fish species for captive propagation, genetic research, presence/absence surveys, and other research activities. The applicant has also requested to amend their current permit to add the diamond darter (*Crystallaria cincotta*) and spring pygmy sunfish (*Elassoma alabamae*) to their list of species and to increase amount of take for boulder darter (*Etheostoma wapiti*) from 12 adults to 16 adults throughout the range of these species.

Permit Application Number: TE–91366A

Applicant: Dr. Paul Stewart, Troy, Alabama

Applicant requests authorization to add waters of the State of Florida to their existing permit authorizing take (capture, translocate, collect voucher specimens, and release) of aquatic species.

Permit Application Number: TE–91373A

Applicant: Jonathan Miller, Troy, Alabama

Applicant requests authorization to add waters of the state of Florida their existing permit authorizing take (capture, translocate, collect voucher specimens, and release) of aquatic species.

Permit Application Number: TE171488–2

Applicant: Walt Disney World Living Seas, Lake Buena Vista, Florida

The applicant requests authorization to hold for veterinary treatment, to retain unreleasable specimens, or to euthanize specimens of Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and olive ridley (*Lepidochelys olivacea*) sea turtles. Treatment facilities are at Walt Disney World Living Seas, but specimens may be accepted from authorized sources throughout Florida and other southeastern states.

Permit Application Number: TE20020A–3

Applicant: Dr. Reed Noss, University of Central Florida, TE–20020A

The applicant requests authorization to take Florida grasshopper sparrows (*Ammodramus savannarum floridanus*) through capture and banding. This activity will take place on State and Federal lands in Okeechobee, Osceola, Highlands, and Polk Counties, Florida.

Permit Application Number: TE25057B–0

Applicant: Nicole Angeli, College Station, Texas

The applicant requests authorization to take (capture, mark, measure, collect tissue, track, survey) the Saint Croix ground lizard (*Ameiva polops*) in Saint Croix, while conducting population and genetic studies.

Permit Application Number: TE102292–10

Applicant: Jeremy Jackson, Richmond, Kentucky

The applicant requests authorization to amend his current permit to take (capture, mark, apply transmitters, track, survey) the Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) in West Virginia, Virginia, Ohio, Pennsylvania, Alabama, Arkansas, Tennessee, North Carolina, Kentucky, Illinois, Indiana, Missouri, New York, Georgia, and Mississippi, while conducting presence/absence surveys, studies to document habitat use, and population monitoring.

Permit Application Number: TE054963–6

Applicant: Heather Barron, Sanibel, Florida

The applicant requests authorization to hold for veterinary treatment, to retain unreleasable specimens, or to euthanize specimens of Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), loggerhead (*Caretta caretta*) and olive ridley (*Lepidochelys olivacea*) sea turtles. Treatment facilities are at CROW Wildlife Hospital, but specimens may be accepted from authorized sources throughout Florida and other southeastern states.

Permit Application Number: TE26395B–0

Applicant: Montgomery Zoo, Montgomery, Alabama

The applicant requests authorization to purchase in interstate commerce six American crocodiles (*Crocodylus acutus*) from Jerry Motta, Bushnell, Florida.

Permit Application Number: TE–27608B

Applicant: McGehee Engineering Incorporated, Jasper, Alabama

Applicant requests authorization to conduct presence/absence surveys and other research activities on aquatic species throughout Alabama. The applicant also requests authorization to capture, examine, and release gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*), to survey for occurrences throughout Alabama.

Dated: February 24, 2014.

Cynthia K. Dohner,

Regional Director.

[FR Doc. 2014–05197 Filed 3–10–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2013–N018; FXES11130200000–145–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

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. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. The Act and the National Environmental Policy Act also require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before April 10, 2014.

ADDRESSES: Wendy Brown, Chief, Recovery and Restoration Branch, by U.S. mail at Division of Classification and Restoration, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103 at 505–248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Division of Classification and Restoration, P.O. Box 1306, Albuquerque, NM 87103; 505–248–6665.

SUPPLEMENTARY INFORMATION: The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) 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, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–082492

Applicant: AZTEC Engineering Group, Inc., Phoenix, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of black-footed ferret (*Mustela nigripes*) in Arizona and New Mexico; southwestern willow flycatcher (*Empidonax traillii extimus*) in Arizona, New Mexico, and Texas; and Yuma clapper rail (*Rallus longirostris yumanensis*) in Arizona.

Permit TE–061127

Applicant: Tierra Right of Way Services, Tucson, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of lesser long-nosed bat (*Leptonycteris yerbabuenae*), Mexican long-nosed bat (*Leptonycteris nivalis*), and southwestern willow flycatcher (*Empidonax traillii extimus*), and to conduct transplanting activities for Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*) within Arizona.

Permit TE–819491

Applicant: Ecosphere Environmental Services, Inc., Durango, Colorado.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys for black-footed ferret (*Mustela nigripes*) within Arizona, New Mexico, Colorado, Utah, and Wyoming, and southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, Colorado, New Mexico, Texas, and Utah.

Permit TE–842583

Applicant: La Tierra Environmental Consulting, LLC., Las Cruces, New Mexico.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow

flycatcher (*Empidonax traillii extimus*) and northern aplomado falcon (*Falco femoralis septentrionalis*) within New Mexico and Texas.

Permit TE–819458

Applicant: Organ Pipe Cactus National Monument, Ajo, Arizona.

Applicant requests a renewal to an expired permit for research and recovery purposes to conduct presence/absence surveys of lesser long-nosed bat (*Leptonycteris yerbabuenae*), southwestern willow flycatcher (*Empidonax traillii extimus*), and Sonoran pronghorn (*Antilocapra americana sonoriensis*); to maintain a refugium population of Quitobaquito pupfish (*Cyprinodon macularius*); and to conduct population monitoring, salvage, and seed collection of Acuña cactus (*Echinomastus erectocentrus* var. *acunensis*) at the Organ Pipe Cactus National Monument in Arizona.

Permit TE–33921A

Applicant: City of San Antonio, San Antonio, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of black-capped vireo (*Vireo atricapilla*) and golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE–051581

Applicant: David Baggett, Huntsville, Texas.

Applicant requests reissuance of an expired permit for research and recovery purposes to conduct presence/absence surveys of red-cockaded woodpecker (*Picoides borealis*) within Texas.

Permit TE–26066A

Applicant: Rudy Bazan, Helotes, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE–076050

Applicant: McAlester Army Ammunition Plant, McAlester, Oklahoma.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys and other research activities of American burying beetle (*Nicrophorus americanus*) within Oklahoma.

Permit TE–25736A

Applicant: Regina Overath, Corpus Christi, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys; collect seeds, leaves, and voucher specimens; and conduct genetic analysis on the following species of listed plants from Federal lands within Texas: South Texas ambrosia (*Ambrosia cheirathifolia*), slender rush-pea (*Hoffmannseggia tenella*), and black lace cactus (*Echinocereus reichenbachii* var. *albertii*).

Permit TE–98704A

Applicant: Dogs for Conservation, Washington, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of Houston toads (*Bufo houstonensis*) using trained canines within Texas.

Permit TE–24625A

Applicant: Wendy Leonard, San Antonio, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*) within Texas.

Permit TE–127287

Applicant: Loren Ammerman, San Angelo, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to add passive integrated transponder (PIT) tagging of 250 adult and juvenile Mexican long-nosed bats (*Leptonycteris nivalis*) at Emory Cave, Texas.

Permit TE–012642

Applicant: Blue Earth Ecological Consultants, Inc., Santa Fe, New Mexico.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus*), loach minnow (*Tiaroga cobitis*), and spikedace (*Meda fulgida*) within Arizona and New Mexico.

Permit TE–815409

Applicant: New Mexico Department of Game and Fish, Santa Fe, New Mexico.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of Jemez Mountains salamander (*Plethodon neomexicanus*) within New Mexico.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: February 20, 2014.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2014–05200 Filed 3–10–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORP000000.102000000.DF0000.14X. HAG14–0068]

Notice of Public Meeting for the John Day—Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, and the U.S. Department of the Interior, Bureau of Land Management (BLM), the John Day—Snake Resource Advisory Council (RAC) will meet as indicated below.

DATES: The John Day—Snake RAC will hold a public meeting Friday, March 14, 2014. The meeting will run from 8 a.m. to 4:30 p.m. An agenda will be posted

at *http://www.blm.gov/or/rac/jdrac_meetingnotes.php* prior to March 1, 2014.

ADDRESSES: The meeting will be held at the BLM Prineville District Office at 3050 NE. 3rd Street, Prineville, Oregon 97754.

FOR FURTHER INFORMATION CONTACT: Lisa Clark, Public Affairs Specialist, BLM Prineville District Office, 3050 NE. 3rd Street, Prineville, Oregon 97754, (541) 416–6864, or email *lmclark@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The John Day—Snake RAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in central and eastern Oregon. Tentative agenda items for the March 14, 2014 meeting include: committee updates and any other matters that may reasonably come before the John Day—Snake RAC. This meeting is open to the public in its entirety. Information to be distributed to the John Day—Snake RAC is requested prior to the start of each meeting. A public comment period will be available on March 14, at 2 p.m. Unless otherwise approved by the John Day—Snake RAC Chair, the public comment period will last no longer than 30 minutes. Each speaker may address the John Day—Snake RAC for a maximum of 5 minutes. Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate business and all who seek to be heard regarding matters before the John Day—Snake RAC.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

Carol Benkosky,

Prineville District Manager.

[FR Doc. 2014–05198 Filed 3–10–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK963000–L14300000–ET0000; F–90576]

Public Land Order No. 7823; Extension of Public Land Order No. 7032; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 7032, issued effective March 10, 1994, for an additional 20-year period. The extension is necessary to continue protection of the archaeological, historical, and cultural resource integrity of the Paleoindian site known as Mesa Site, which would otherwise expire on March 9, 2014.

DATES: *Effective Date:* March 10, 2014.

FOR FURTHER INFORMATION CONTACT: Robert L. Lloyd, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, AK 99513–7504. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension to continue to protect the archaeological, historical, and cultural resource integrity of the Paleoindian site known as Mesa Site. The withdrawal extended by this order will expire on March 9, 2034, unless as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 7032 (59 FR 11196 (1994)), which withdrew approximately 2,560 acres of public land from settlement, sale, location, or entry under the general land laws, and from location and entry under the United States mining laws, but not from mineral leasing, to protect the archaeological, historical, and cultural resource integrity of the Paleoindian site known as Mesa Site, is hereby extended for an additional 20-year period until March 9, 2034.

Dated: February 26, 2014.

Anne J. Castle,

Assistant Secretary—Water and Science.

[FR Doc. 2014–05278 Filed 3–10–14; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Draft Environmental Impact Statement on the Backcountry Access Plan for Big Cypress National Preserve, Florida

[NPS–SERO–BICY–14534; PPSESEROC3,PPMPSAS1Y.YP0000]

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the NPS will prepare an EIS for the Backcountry Access Plan for the Big Cypress National Preserve (Preserve). This notice initiates the pubic scoping process for this EIS.

DATES: The date, time, and location of public meetings will be announced through the NPS Planning, Environment, and Public Comment (PEPC) Web site *http://parkplanning.nps.gov/bicy,* the Big Cypress National Preserve Web site, and in local media outlets. The NPS will conduct public meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to backcountry use and access within the Preserve. Suggestions and ideas related to recreational use and the management of cultural and natural resource conditions and visitor experiences at the Preserve are encouraged. The comment period will be announced at the meetings and will be published on the backcountry access plan Web site for Big Cypress National Preserve at *http://parkplanning.nps.gov/bicy* .

ADDRESSES: Interested individuals, organizations, and agencies are encouraged to provide written comments or suggestions to assist the NPS in determining the scope of issues

related to the management of backcountry use and access in Big Cypress National Preserve. Written comments may be sent to: Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail East Ochopee, Florida 34141–1000.

FOR FURTHER INFORMATION CONTACT: Big Cypress National Preserve Chief of Interpretation Bob DeGross at the address shown above, by phone at (239) 695–1107, or via email at *bob_degross@nps.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the Backcountry Access Plan is to provide a management scheme for off-road vehicle (ORV) secondary trails, non-motorized trails, and camping management approach that protects the Preserve's natural and cultural resources while providing for public enjoyment. The plan will also establish a permanent route for the Florida National Scenic Trail within the Preserve.

Public meetings will be held in the local area, and the dates and times may be obtained from local media outlets or by visiting *http://parkplanning.nps.gov/bicy*. We urge that comments and suggestions be made in writing.

The plan will address a number of key issues related to backcountry access in the Preserve. The draft plan objectives include: (1) Evaluate the suitability of secondary ORV trails and non-motorized trails in the original Preserve; (2) re-route the Florida National Scenic Trail within the Preserve, in collaboration with the U.S. Forest Service; (3) evaluate and establish guidance to manage camping within the Preserve; (4) clarify definitions of key terms from previous planning and management documents to better guide the Preserve management efforts; (5) with respect to trails and camping areas Preserve-wide, evaluate and refine indicators and standards from previous plans to ensure that monitoring activities provides useful information and are financially sustainable; (6) develop a range of alternatives for secondary trails and camping within the original Preserve; and (7) complete NEPA analysis on a range of alternatives for secondary ORV trails, non-motorized trails, and camping.

A Draft Backcountry Access Plan/EIS will be prepared and presented to the public for review and comment, followed by preparation and availability of the Final Backcountry Access Plan/EIS.

Before including your address, phone number, email address, or other personal identifying information in any comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The responsible official for this Draft Backcountry Access Plan/EIS is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: February 24, 2014.

Shawn T. Benge,

Deputy Regional Director, Southeast Region.

[FR Doc. 2014–05284 Filed 3–10–14; 8:45 am]

BILLING CODE 4310–JD–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–FORA–0419–14625; PPSESEROC3, PPMPSAS1Y.YP0000]

Final General Management Plan and Final Environmental Impact Statement, Fort Raleigh National Historic Site, North Carolina

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability

SUMMARY: Pursuant to 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c), the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement for the General Management Plan (Final EIS/GMP) for Fort Raleigh National Historic Site, North Carolina. Consistent with NPS laws, regulations, and policies and the purpose of the national monument, the Final EIS/GMP will guide the management of the national monument over the next 20+ years.

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of its Notice of Availability of the Final EIS/GMP in the **Federal Register**.

ADDRESSES: Electronic copies of the Final EIS/GMP will be available online at *http://parkplanning.nps.gov/FORA*. To request a copy, contact David Libman, National Park Service, 100 Alabama Street, 1924 Building, Atlanta, Georgia 30303; telephone (404) 507–5701. A limited number of compact disks and printed copies of the Final EIS/GMP will be made available at Fort Raleigh National Historic Site Headquarters, 1401 National Park Drive, Manteo, NC 27954.

FOR FURTHER INFORMATION CONTACT: David Libman, National Park Service, 100 Alabama Street, 1924 Building, Atlanta, North Carolina 30303; telephone (404) 507–5701.

SUPPLEMENTARY INFORMATION: The Final EIS/GMP responds to, and incorporates agency and public comments received on, the Draft EIS, which was available for public review from April 5, 2013, through June 4, 2013. One public meeting was held on April 30, 2013, and a total of 15 comments were received. The NPS responses to substantive agency and public comments are provided in Chapter 5, Consultation and Coordination section, of the Final EIS/GMP.

The Final EIS/GMP evaluates three alternatives for managing use and development of the national monument:

- Alternative A, the No Action alternative represents the continuation of current management action and direction into the future.
- Alternative B, would significantly expand the scope of its partnerships though greater partner involvement in interpretation of the Roanoke Voyages. NPS staff would interpret other stories connected to the national historic site. The NPS would study and evaluate the feasibility of an expanded Waterside Theatre campus in which a partner funded visitor center/indoor theater could be built for interpretation and theatrical education.
- Alternative C, the NPS preferred alternative, would implement Section 3 of Public Law 101–603, November 16, 1990, by increasing emphasis on research related to parkwide interpretive themes and legislative mandates. Fort Raleigh would continue its partnership with the First Colony Foundation, establish partnerships with organizations that focus on natural and cultural resource topics, and include archeology as a significant aspect of the research program at the national historic site.

When approved, the plan will guide the management of the national monument over the next 20+ years.

The responsible official for this Final EIS/GMP is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, North Carolina 30303.

Dated: February 24, 2014.

Shawn T. Benge,

Deputy Regional Director, Southeast Region.

[FR Doc. 2014–05296 Filed 3–10–14; 8:45 am]

BILLING CODE 4310–JD–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14182; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Institute of the Great Plains, Lawton, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Institute of the Great Plains has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Institute of the Great Plains. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Institute of the Great Plains at the address in this notice by April 10, 2014.

ADDRESSES: Debra Baker, NAGPRA Representative, Museum of the Great Plains, 601 NW Ferris Ave., Lawton, OK 73505, telephone (580) 581–3460, email *debrab@museumgreatplains.org*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Institute of the Great Plains, Lawton, OK. The human remains and associated funerary objects were removed from Poafpybitty site, in Comanche County, OK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Institute of the Great Plains professional staff in consultation with representatives of the Kiowa Indian Tribe of Oklahoma.

History and Description of the Remains

In the spring of 1966, human remains representing, at minimum, two individuals were removed from the Poafpybitty site in Comanche County, OK. Two archeologists from the Museum of the Great Plains, Tyler Bastian and Franklin Chappabitty, were called to the area following a report that human remains were eroding from the soil. In response to the extreme erosion occurring at the site, a salvage excavation was performed with the permission of the landowner, Bill Poafpybitty. Richard McWilliams, a graduate student of the University of Oklahoma, who served as the physical anthropologist for the excavation, removed the human remains and associated funerary objects. Instead of transferring the human remains and cultural items to the Museum of the Great Plains, McWilliams donated them to Wake Forest University in Winston-Salem, NC. The only information about the human remains and associated funerary objects at Wake Forest University was that they belonged to Kiowa burials. In 2007, Debra Baker, an archeologist with the Institute of the Great Plains (which is a non-profit organization associated with the Museum of the Great Plains and is responsible for all collections), located the human remains and cultural items at Wake Forest University and oversaw their transfer to the Institute of the Great Plains. No known individuals were identified. The 247 associated funerary objects are 1 shell breast plate; 1 decorated wood mirror; 93 brass/copper bracelets; 1 plume holder and fragments from a military helmet; 6 stamped bracelets; 1 chain bracelet; 1 lot of fragments from a parasol; 1 shell pipe bracelet; 3 metal projectile points; 2 rings; 2 pocket knives; 1 fragmented belt with tacks and a raised five star buckle; 1 rectangular mirror; 7 fragmented tablespoons; 2 fragmented concha belts with numerous fragments of conchas; 1 metal pitcher handle; 26 fragments of a large tin cup; 1 brass thimble; 1 axe head; 57 wire nails; 2 square nails; 4 screws; 1 lot of multi colored seed beads; 1 glass bottle and cork; 18 assorted buttons; 1 lot of fragments from saddle buckles, rings, and stirrups; 2 horse bits; and 9 fragments from a decorated headstall.

A published report in *Plains Anthropologist* from 1976, titled "The Poafpybitty Site: A Late Nineteenth Century Kiowa Study from Southwestern Oklahoma," was completed by Museum of the Great Plains historian William K. Jones, who served as the ethnographer for the report, and by physical anthropologist Richard McWilliams. The report states that the Comanche landowner, Mary Poafpybitty, was told by her father that the grave contained Kiowas killed prior to the reservation period (circa 1875), when her father was a young warrior. According to her father's story, the Kiowas were camped on East Cache Creek approximately one and a half miles east of the grave site, when Fort Sill soldiers attacked the Kiowas and chased some as far as the burial site, where several of the Kiowas were killed. Historically and geographically, the location of the site was known to be utilized by the Kiowa, Kiowa-Apache, and Comanche tribes. Historic documentation confirms the presence of Kiowas on East Cache Creek several times in the early 1870s, corresponding with Poafpybitty's statement and with the dates of the associated funerary objects. Furthermore, the extended burial position of the human remains further supports a Kiowa affiliation.

Determinations Made by the Institute of the Great Plains

Officials of the Institute of the Great Plains have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 247 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Kiowa Indian Tribe of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice

that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Debra Baker, NAGPRA Representative, Museum of the Great Plains, 601 NW Ferris Ave., Lawton, OK 73505, telephone (580) 581–3460, email *debrab@museumgreatplains.org*, by April 10, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Kiowa Indian Tribe of Oklahoma may proceed.

The Institute of the Great Plains is responsible for notifying the Kiowa Indian Tribe of Oklahoma that this notice has been published.

Dated: September 25, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2014–05188 Filed 3–10–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14828;PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Del Norte County Historical Society, Crescent City, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Del Norte County Historical Society, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Del Norte County Historical Society. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Del Norte County Historical Society at the address in this notice by April 10, 2014.

ADDRESSES: Sean Smith, Del Norte County Historical Society, 577 H St., Crescent City, CA 95531, telephone (707) 464–3922, email *manager@delnortehistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Del Norte County Historical Society, Crescent City, CA (DNCHS) that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

On an unknown date, two cultural items were removed from an unknown location in Tolowa territory, by an unknown individual. The items were found in the DNCHS museum collection. Both items appear to have been buried, as they are embedded with silt. The two unassociated funerary objects are 1 lot of Dentalium & clamshell fragments (catalog number 50) and 1 clamshell and porcelain bead necklace (catalog number 50–59).

On an unknown date, 33 cultural items were collected from Yan'-daa-k'vt (Burnt Ranch) and Taa-ghii~-'a~ (Pt. St. George), in Del Norte County, CA, by E. F. Benedict. In 1959, his daughter, Mrs. C. W. Jenkins, donated the items to the DNCHS. The 33 unassociated funerary objects are 33 arrowheads (catalog number 7).

On an unknown date, Dr. Ellis Thompson collected 31 cultural items from Taa-ghii~-'a~ (Pt. St. George), in Del Norte County, CA, and an unknown location in Tolowa territory. On January 26, 1959, he donated the items to the DNCHS. The 31 unassociated funerary objects are 1 lot of fire-fractured rocks and stones (catalog number 6), 16 arrowheads (catalog number 6), and 14 bird-bone whistles (catalog number 6).

On an unknown date, 68 cultural items were collected from Taa-ghii~-'a~ (Pt. St. George), in Del Norte County, CA, by Marion Van Meter. In February 1959, they were donated to the DNCHS. The 68 unassociated funerary objects are 1 rock (catalog number 4) and 67 bone and stone tools (catalog number 4).

On an unknown date, six cultural items were collected from Xaa-wan'-k'wvt (Howonquet), in Del Norte County, CA, by an unknown collector. In February 1959, Mrs. Edwin Skeie donated the items to the DNCHS. The six unassociated funerary objects are 6 arrowheads (catalog number 5).

On an unknown date, eight cultural items were collected from Yan'-daa-k'vt (Burnt Ranch), in Del Norte County, CA, by Carol McClendon. On February 25, 1959, Carol McClendon donated the items to the DNCHS. The eight unassociated funerary objects are 8 arrowheads (catalog number 9).

On an unknown date, three cultural items were collected from Taa-ghii~-'a~ (Pt. St. George), in Del Norte County, CA, by Mrs. Harry Knudson. On March 1, 1959, Mrs. Harry Knudson donated the items to the DNCHS. The three unassociated funerary objects are 3 arrowheads (catalog number 11).

On an unknown date, two cultural items were collected from Fort Dick, CA, on the Yaunker Ranch, by Emmett Weir. On May 28, 1959, Emmett Weir donated the items to the DNCHS. The two unassociated funerary objects are 1 mortar and 1 pestle (catalog number 26–1).

On an unknown date, one cultural item was collected from Yan'-daa-k'vt (Burnt Ranch), in Del Norte County, CA, by Gabel Richards. On October 17, 1961, Gabel Richards donated the item to the DNCHS. The one unassociated funerary object is an acorn-pounding slab (catalog number 114–2).

On an unknown date, eight cultural items were collected from Taa-ghii~-'a~ (Pt. St. George), in Del Norte County, CA, by Richard A. Gould. On September 6, 1964, Richard A. Gould donated the items to the DNCHS. The eight unassociated funerary objects are 4 shell beads (catalog number 209–1), 1 stone anvil (catalog number 209–2), 2 stone bowls (209–4), and 1 acorn-pounding slab (209–4).

On an unknown date, three cultural items were collected from Wonder Stump Road, in Del Norte County, CA, by Clyde Harmon. On November 8, 1967, Clyde Harmon donated the items to the DNCHS. The provenience of these items is most likely one of the Tolowa villages located in the vicinity of Wonder Stump Road—T'uu-nes-dvn, Tr'aa-me-yash-dvn, or (most likely) 'li~sdvm-'e'-dv -, which was a refuge for those who survived the Tolowa genocide. The three unassociated funerary objects are abalone shell pendants (catalog numbers 313–1, 313–2, & 313–3).

On an unknown date, 89 cultural items were collected from Taa-ghii~-'a~

(Pt. St. George), in Del Norte County, CA, by Michael Campbell. On February 22, 1973, Michael Campbell donated the items to the DNCHS. The 89 unassociated funerary objects are 54 projectile points, 8 bone fragments, 6 shell beads, 1 lot of restrung button beads and Dentalium, and 20 stone fragments (catalog number A–14–G).

On an unknown date, 123 cultural items were collected from Yan'-daa-k'vt (Burnt Ranch), in Del Norte County, CA, by Marion Van Meter. On December 23, 1975, Marion Van Meter donated the items to the DNCHS. The 123 unassociated funerary objects are 123 arrowheads (catalog number 4).

In August 1982, one cultural item was collected in the Jedediah Smith Redwoods State Park, in Del Norte County, CA, by Joyce Lawrence, a park visitor. On August 5, 1982, Joyce Lawrence donated the item to the DNCHS. The one unassociated funerary object is 1 piece of obsidian (catalog number 442–3).

On an unknown date, four cultural items were removed from an unknown location in Tolowa territory, by Richard Goss. On May 5, 1986, Richard Goss donated the items to the DNCHS. The four unassociated funerary objects are 4 lots of restrung glass beads (catalog number 553).

During the past 60 years, amateur and university-funded archeologists have removed cultural items from Taa-ghii~-'a~ (Point St. George), Xaa-wan'-k'wvt (Howonquet), and Yan'-daa-k'vt (Burnt Ranch), as well as many other locations within the traditional territory of the Tolowa Dee-ni'. The historical evidence associated with the massacres that occurred at the Tolowa sites from which the cultural items in this notice were removed, as well as the collecting and looting patterns in Del Norte County, support the assertion that these sites became burial sites at the time of the mass executions there. Furthermore, during consultation, a representative of the Smith River Rancheria, California, confirmed that the cultural items in this notice are known to be present in Tolowa Dee-ni' burials, and are considered to be and treated as funerary objects. The Smith River Rancheria, California, is comprised of more than 1500 tribal members who descended from occupants of the aboriginal Tolowa Dee-ni' villages located along the Pacific Coast between Wilson Creek (at the southern end), Sixes River (to the north), and inland to the Applegate River drainage watershed. The locations from which the cultural items were removed are ancestral villages situated within the ancestral territory of the Tolowa Dee-ni'. For the Tolowa, the Center of the World is the village of Yan'daa-k'vt (Burnt Ranch), which along with other ancestral villages faced near annihilation and massacre by newcomers to the Tolowa territory. The Tolowa Dee-ni' Holocaust began in 1851. Within the span of five years Tolowa people were nearly extinct. One of the first and most brutal attacks occurred at Yan'daa-k'vt, while the people gathered for the Earth Renewal Ceremony, Nee-dash. This massacre was followed by another at 'Ee-chuu-le', a village along Lake Earl in Del Norte County. According to documentary evidence, this ". . . massacre left seven layers of bodies in the Dance House before it was set ablaze" (Bommelyn 2006). As a result of the mass burnings, villages were transformed into burial grounds for the massacred Tolowa Dee-ni' and the items placed with or near them. During consultation, a representative of the Smith River Rancheria, California, identified specific types of items as funerary objects. Yan'daa-k'vt (Burnt Ranch) is recorded as the largest massacre site of Tolowa Dee-ni'. This location is documented as a mass gravesite resulting from the genocidal acts of 1853. It also has been subjected to years of looting and inadvertent discoveries of human remains and funerary objects.

Determinations Made by the Del Norte County Historical Society

Officials of the Del Norte County Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 382 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from the specific burial sites of Native American individuals.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Smith River Rancheria, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Sean Smith, Del Norte County Historical Society, 577 H St., Crescent City, CA 95531, telephone (707) 464–3922, email *manager@delnortehistory.org*, by April 10, 2014. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Smith River Rancheria, California, may proceed.

The Del Norte County Historical Society is responsible for notifying Smith River Rancheria, California, that this notice has been published.

Dated: January 15, 2014.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–05187 Filed 3–10–14; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–007]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: March 14, 2014 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–512 and 731–TA–1248 (Preliminary) (Carbon and Certain Alloy Steel Wire Rod from China). The Commission is currently scheduled to complete and file its determinations on March 17, 2014; the Commission is currently scheduled to complete and file the views of the Commission on March 24, 2014.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 6, 2014.

By order of the Commission:

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–05322 Filed 3–7–14; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On March 5, 2014, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Mississippi in the lawsuit entitled *United States, State of Mississippi, by and through Mississippi Commission on Environmental Quality* v. *Total Environmental Solutions, Inc. and Utility Services, LLC,* Civil Action No. 1:14–cv–001114–LG–JMR.

The lawsuit was filed against Total Environmental Solutions, Inc. ("TESI") and Utility Services, LLC on March 3, 2014 pursuant to Clean Water Act ("CWA") Sections 309(b) and (d), 33 U.S.C. 1319(b) and (d), and the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49–17–1 *et seq.*, seeking penalties and injunctive relief under Sections 301 and 402 of the CWA, 33 U.S.C. 1311 and 1342, and under Miss. Code Ann. §§ 49–17–23(2), 49–17–29 and 49–17–43(1) for (1) unpermitted discharges of untreated sewage into navigable waters and waters of the State of Mississippi; (2) failure to comply with certain National Pollutant Discharge Elimination System ("NPDES") effluent permit conditions; (3) failure to comply with standard NPDES permit conditions, including failure to monitor or report the results of requiring monitoring of pollutants in its water discharges from July 2007 to June 2010.

The proposed Consent Decree contains injunctive relief, including effluent monitoring and management, a sanitary sewer overflow plan, and the following operation and maintenance programs: (a) A comprehensive performance evaluation and development of a composite correction plan; (b) a sewer overflow response program; (c) an emergency operations and maintenance plan; (d) a training program; (e) an information management system program; (f) a sewer mapping program; (g) a financing and cost analysis program; (h) a fats, oils and grease public education program; (i) a pump station operations program; (j) a gravity line preventive maintenance program; and (k) a pump station preventive maintenance program. Utility Services intends to purchase the facilities from TESI and then assume the responsibilities of TESI to perform the injunctive relief. TESI also has agreed to pay a penalty of $225,000, of which $112,500 will be paid to the United States, and $112,500 will be paid to the Mississippi Department of Environmental Quality.

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, State of Mississippi, by and through Mississippi Commission on Environmental Quality* v. *Total Environmental Solutions, Inc. and Utility Services, LLC,* Civil Action No. 1:14–cv–001114–LG–JMR, D.J. Ref. No. 90–5–1–1–09955. 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, D.C. 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 $63.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy of the Consent Decree without Appendix B—EPA Region IV Guidance on Capacity, Management, Operation and Maintenance ("CMOM") programs, the cost is $18.50.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–05226 Filed 3–10–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On March 5, 2014, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of West Virginia in a lawsuit entitled *United States, et al.* v. *Alpha Natural Resources, Inc., et al.,* Civil Action No. 2:14–cv–11609.

The proposed Consent Decree will resolve Clean Water Act claims alleged in this action by the United States, the State of West Virginia, the Pennsylvania Department of Environmental Protection, and the Commonwealth of Kentucky against Alpha Natural Resources, Inc. and 59 of its subsidiaries [1] (collectively, "Alpha") for the discharge of pollutants into state waters and waters of the United States in violation of limits in National Pollutant Discharge Elimination System ("NPDES") permits. The Consent Decree will also resolve claims against Alpha Natural Resources, Inc. and Cumberland Coal Resources, LP for discharging pollutants into state waters and waters of the United States without complying with the requirements for obtaining an NPDES permit.

Under the proposed Consent Decree, Defendants will perform injunctive relief including: (1) Development and implementation of an environmental management system and periodic internal and third-party environmental compliance auditing; (2) data tracking and evaluation measures, including centralized audit and violations databases to track information relevant to compliance efforts at each outfall; (3) response measures for effluent limit violations, including consultation with a third-party expert and automatic stipulated penalties; (4) construction and operation of a specified treatment system to address violations of osmotic

[1] Alpha Natural Resources, Inc.; Alpha Appalachia Holdings, Inc.; Alex Energy, Inc.; Alpha PA Coal Terminal, LLC; Amfire Mining Company, LLC; Aracoma Coal Co., Inc.; Bandmill Coal Corp.; Belfry Coal Corp.; Big Bear Mining Co.; Brooks Run Mining Company, LLC; Brooks Run South Mining LLC; Clear Fork Coal Co.; Cumberland Coal Resources, LP; Delbarton Mining Co.; Dickenson-Russell Coal Company, LLC; Duchess Coal Co.; Eagle Energy, Inc.; Elk Run Coal Co., Inc.; Emerald Coal Resources, LP; Enterprise Mining Company, LLC; Goals Coal Co.; Greyeagle Coal Co.; Harlan Reclamation Services LLC; Herndon Processing Co., LLC; Highland Mining Co.; Independence Coal Company, Inc.; Jacks Branch Coal Co.; Kanawha Energy Co.; Kepler Processing Co., LLC; Kingston Mining, Inc.; Kingwood Mining Co., LLC; Knox Creek Coal Corp.; Litwar Processing Co., LLC; Marfork Coal Co.; Martin County Coal Corp.; New Ridge Mining Co.; Omar Mining Co.; Paramont Coal Company Virginia, LLC; Paynter Branch Mining, Inc.; Peerless Eagle Coal Co.; Performance Coal Co.; Peter Cave Mining; Pigeon Creek Processing Corp.; Pioneer Fuel Corp.; Power Mountain Coal Co.; Premium Energy, LLC; Rawl Sales & Processing Co.; Resource Land Co.; Riverside Energy Co., LLC; Road Fork Development Co.; Rockspring Development, Inc.; Rum Creek Coal Sales, Inc.; Sidney Coal Co.; Spartan Mining Co.; Stirrat Coal Co.; Sycamore Fuels Inc.; Tennessee Consolidated Coal Company; Trace Creek Coal Co.; and Twin Star Mining, Inc.

pressure permit limits; and (5) implementation of compliance plans, including water management or treatment approaches, to address violations of selenium permit limits. In addition, Alpha will pay a civil penalty of $27.5 million.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Alpha Natural Resources, Inc., et al.*, D.J. Reference No. 90–5–1–1–08470/1. 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 proposed consent decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.*

We will provide a paper copy of the proposed 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 $29.25 (25 cents per page reproduction costs) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $22.00.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2014–05149 Filed 3–10–14; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On March 5, 2014, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Montana in the lawsuit entitled *United States and the State of Montana* v. *the City of Great Falls, Montana and Malteurop North America, Inc.*, Civil Action No. 4:14–cv–00016–BMM.

The United States filed this lawsuit under the Clean Water Act. The complaint names the City of Great Falls, Montana (the "City") and Malteurop North America, Inc. ("Malteurop") as defendants. The complaint seeks injunctive relief and civil penalties for violations of various provisions of the Clean Water Act arising from the City's operation of its municipal wastewater and sewer system and from Malteurop's operation of a malting plant that discharges to the City's sewer system.

The proposed Decree would require the City to implement its Pretreatment Program. The Decree would also require the City to take a number of specific steps to prevent sanitary sewer overflows, including implementing a program for controlling Fats, Oil, and Grease ("FOG") and root growth; a program for controlling inflow and infiltration ("I/I") (unless the City demonstrates that I/I is not contributing to SSOs or bypass events and that it has the capacity to transport and treat I/I); and a Capacity, Management, Operations, and Maintenance ("CMOM") program. Finally, the Decree would require the City to pay a $120,000 civil penalty, to be split equally between the United States and the State of Montana.

The proposed Decree would require Malteurop to meet limits based on OSHA standards for hydrogen sulfide at a specific location in the City's sewer. Malteurop may meet these limits by constructing a private service line to bypass a portion of the sewer where conditions exist that allow Malteurop's discharges to result in the formation of hydrogen sulfide. In the interim, Malteurop will continue to operate an existing Super Oxygenation System, which minimizes hydrogen sulfide formation by injecting dissolved oxygen into a portion of the wastewater discharged by Malteurop. The proposed Decree would also require Malteruop to pay a $525,000 civil penalty to the United States.

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, et al.* v. *the City of Great Falls, MT, et al.*, D.J. Ref. No. 90–5–1–08955. 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, D.C. 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 $30.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–05201 Filed 3–10–14; 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; Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of the Assistant Secretary for Administration and Management (OASAM) sponsored information collection request (ICR) revision titled, "Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building," 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 April 10, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the

RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201311-1225-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–DM, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Non-DOL entities use the Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building, Form DL1–6062B, when applying to use conference and meeting capabilities located in the DOL headquarters building. This application is an information collection subject to the PRA. This ICR has been classified as a revision, because of a change to Form DL1–6062B that will remove a request that an outside entity could previously make to obtain a waiver of certain restrictions generally applicable to the use of Federal facilities. The form is also being updated to explain that applications for fund raising or commercial activities will be reviewed by DOL Counsel for acceptability.

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 1225–0087. The current approval is scheduled to expire on March 31, 2014; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 29, 2013 (78 FR 71665).

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 1225–0087. 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–OASAM.

Title of Collection: Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building.

OMB Control Number: 1225–0087.

Affected Public: Private Sector—not-for-profit institutions.

Total Estimated Number of Respondents: 5.

Total Estimated Number of Responses: 7.

Total Estimated Annual Time Burden: 1 hour.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 6, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–05228 Filed 3–10–14; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–018]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice; Information Collections.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below by April 10, 2014 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on December 26, 2013 (78 FR 78401). No comments were received. NARA has submitted the described information collections to OMB for approval. In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d)

ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by these collections. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Statistical Research in Archival Records Containing Personal Information.

OMB number: 3095–0002.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals.

Estimated number of respondents: 1.

Estimated time per response: 7 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 7 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.28 and 36 CFR 1256.56. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. NARA needs the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.28 and that the proper safeguards will be made to protect the information.

2. *Title:* Request to use personal paper-to-paper copiers at the National Archives at the College Park facility.

OMB number: 3095–0035.

Agency form number: None.

Type of review: Regular.

Affected public: Business or other for-profit.

Estimated number of respondents: 5.

Estimated time per response: 3 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 15 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.86. Respondents are organizations that want to make paper-to-paper copies of archival holdings with their personal copiers. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.86 and to schedule the limited space available.

Dated: February 26, 2014.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2014–05207 Filed 3–10–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–019]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice; Information Collections.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of two currently approved information collections. The first information collection is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law, and (2) the information to be provided so that records may be identified. The second information collection is used when veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before May 12, 2014 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (ISSD), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Court Order Requirements.

OMB number: 3095–0038.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of NARA administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense and the Department of Transportation, the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

2. *Title:* Authorization for Release of Military Medical Patient Records, Request for Information Needed to Locate Medical Records, Request for Information Needed to Reconstruct Medical Data, and Questionnaire about Military Service.

OMB number: 3095–0039.

Agency form number: NA Forms 13036, 13042, 13055, and 13075.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 79,800.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated total annual burden hours: 6,650 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Department of Defense and the Department of Transportation (U.S. Coast Guard), the National Personnel Records Center (NPRC) of NARA administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

Dated: February 26, 2014.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2014–05206 Filed 3–10–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The Members of the National Council on Disability (NCD) will hold a quarterly meeting on Monday, March 31, 2014, 11 a.m.–1 p.m. (Eastern). This meeting takes the place of the meeting previously noticed to have occurred on Monday, March 3, 2014, which was cancelled due to inclement weather.

PLACE: The meeting will occur by phone. NCD staff will participate in the call from the NCD office at 1331 F Street NW., Suite 850, Washington, DC 20004. Interested parties may join the meeting in person at the NCD office or may join the phone line in a listening-only capacity (other than the period allotted for by-phone public comment) using the following call-in number: 888–428–9490; Conference ID: 5307787; Conference Title: NCD Meeting; Host Name: Jeff Rosen.

MATTERS TO BE CONSIDERED: The Council will receive reports from its standing committees; receive panel presentations from policy experts on the Affordable Care Act; and receive its annual ethics training.

AGENDA: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern):

11–11:30 a.m.—Call to Order and Council Committee Reports

11:30 a.m.–12:15 p.m.—Presentation on the Affordable Care Act (ACA), with presentations by Judy Solomon, Vice President for Health Policy, Center on Budget and Policy Priorities; Melissa Harris, Director, Division of Benefits and Coverage, Disabled and Elderly Health Programs Group, Center for Medicaid and CHIP Services, Centers for Medicare and Medicaid Services; Sharon Lewis, Principal Deputy Administrator, Administration for Community Living (ACL), U.S. Department of Health and Human Services:

12:15–12:30 p.m.—Public Comment on the Affordable Care Act

12:30–1 p.m.—Annual Ethics Training for NCD Council Members and Staff

1:00 p.m.—Meeting Adjourned

PUBLIC COMMENT: Due to NCD's focus on the Affordable Care Act (ACA) on this Council call, the brief public comment period available by phone will be used to receive only comments related to ACA. All those who are interested in making public comment regarding ACA by phone must register in advance by emailing *PublicComment@ncd.gov* and noting "Registration" in the subject line. Phone comment space is limited and will be accommodated on a first-registered, first-acknowledged basis until the time is filled. Commenters will be asked to limit their remarks to three minutes and are welcome to submit more detailed comments to the Council via email. The Council always welcomes all comments, regardless of topic, via email. NCD encourages those interested in raising an issue or concern to the Council's attention to email their thoughts to *PublicComment@ncd.gov.*

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: A CART streamtext link has been arranged for this meeting. The web link to access CART is: *http://www.streamtext.net/text.aspx?event=033114NCD1100am.* Those who plan to attend the meeting in-person and require accommodations should notify NCD as soon as possible to allow time to make arrangements.

Please note: To help reduce exposure to fragrances for those with multiple chemical sensitivities, NCD requests that all those attending the meeting in person please refrain from wearing scented personal care products such as perfumes, hairsprays, colognes, and deodorants.

Dated: March 7, 2014.

Rebecca Cokley,

Executive Director.

[FR Doc. 2014–05357 Filed 3–7–14; 11:15 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Libraries and Broadband: Urgency and Impact; Public Hearing

AGENCY: Institute of Museum and Library Services (IMLS).

ACTION: Notice of public hearing; request for comments.

SUMMARY: The U.S. Institute of Museum and Library Services is holding a public hearing, "Libraries and Broadband: Urgency and Impact," to examine the need for high speed broadband in America's libraries. The Institute of Museum and Library Services is charged with advising the President and Congress about the library, museum and information service needs of the American public.

DATES: *Public Hearing:* April 17, 2014, 9:00 a.m.—12:00 p.m. *Requests to Participate:* Submit requests to participate at the meeting by March 24, 2014. *Written Comments:* Written comments received by May 1, 2014 will be part of the record.

ADDRESSES: The public hearing will be held at Martin Luther King Jr. Memorial Library, 901 G St. NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Gladstone Payton, Congressional Affairs Officer, Institute of Museum and Library Services, *gpayton@imls.gov.* Written comments should be directed to *comments@imls.gov.* Comments received by May 1, 2014 will be part of the record. Requests to participate in the hearing should be directed to *comments@imls.gov* by March 24, 2014. To make special arrangements for persons with disabilities, contact: *elyons@imls.gov.*

SUPPLEMENTARY INFORMATION: For the nation's 123,000 school, public, research and academic libraries and the millions of Americans that they serve, it is vital that libraries have the high speed internet connections the public demands for educational, cultural, health and workforce information and services. Presidential initiatives like Connect-Ed and the FCC Chairman's call for modernization of the E-rate program have put a spotlight on the urgency to equip schools and libraries with high speed broadband connections. The Institute of Museum and Library Services (IMLS) has primary responsibility for the development and implementation of policy to ensure the availability of museum, library and information services adequate to meet the essential information, education, research, economic, cultural and civic needs of the people of the United States. *See* 20 U.S.C. Section 9103(c)(1). In carrying out this responsibility, IMLS is authorized to engage with Federal, State, and local government agencies and private entities in assessing current needs and coordinating the development of plans, policies, and activities to meet such needs effectively. *Id.* at Section (c)(2). Pursuant to the authority granted in 20 U.S.C. Section 9110, IMLS is conducting this public hearing for the purpose of establishing a public record specifically focused on the need for and impact of high speed broadband connectivity in America's libraries.

The Institute will hear from witnesses on the following topics:

Panel One: The Vision, What's Working: This panel will explore innovative practices and partnerships that are serving individuals and communities well.

Panel Two: The Data: This panel will explore what is known about broadband connections and services in America's libraries.

Panel Three: The Urgency, What's At Risk: This panel will explore risks associated with insufficient connectivity in libraries.

The hearing is open to the public, subject to space availability. Written comments for the hearing will be accepted and must be received on or before May 1, 2014, in order to be included in the hearing record. Each comment must include the author's name and organizational affiliation, if any.

Signed: March 5, 2014.

Nancy E. Weiss,

General Counsel.

[FR Doc. 2014–05154 Filed 3–10–14; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: March 2014

TIME AND DATES: All meetings are held at 2 p.m.

Tuesday, March 11;
Wednesday, March 12;
Thursday, March 13;
Tuesday, March 18;
Wednesday, March 19;
Thursday, March 20;
Tuesday, March 25;
Wednesday, March 26;
Thursday, March 27.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Henry Breiteneicher, Associate Executive Secretary, (202) 273–2917.

Dated: March 7, 2014.

William B. Cowen,

Solicitor.

[FR Doc. 2014–05379 Filed 3–7–14; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Research Performance Progress Report Updates

AGENCY: National Science Foundation (NSF).

ACTION: Request for public comment.

SUMMARY: The Research Performance Progress Report (RPPR) for use with interim progress reports resulted from an initiative of the Research Business Models (RBM) Subcommittee of the Committee on Science (CoS), a committee of the National Science and Technology Council (NSTC). The updated RPPR will directly benefit award recipients by making it easier for them to administer Federal grant and cooperative agreement programs through standardization of the types of information required in interim and final performance reports—thereby reducing their administrative effort and costs. The RPPR will also make it easier to compare the outputs, outcomes, etc. of research programs across the government.

DATES: Comments must be received by May 12, 2014.

ADDRESSES: Comments should be addressed to Suzanne H. Plimpton, Reports Clearance Officer, Office of the General Counsel, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, email: *splimpto@nsf.gov;* telephone: (703) 292–7556; FAX (703) 292–9242. We encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Please include *"Research Performance Progress Reporting"* in the subject line of the email message; please also include the full body of your comments in the text of the message and as an attachment. Include your name, title, organization, postal address, telephone number, and email address in your message. To view the RPPR format, see: *http://www.nsf.gov/bfa/dias/policy/rppr/index.jsp.*

FOR FURTHER INFORMATION CONTACT: For information on the RPPR, contact Jean Feldman, Head, Policy Office, Division of Institution & Support, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, email: *jfeldman@nsf.gov;* telephone (703) 292–8243; FAX: (703) 292–9171. For further information on the NSTC RBM Interagency Working Group, contact Kei Koizumi, at the Office of Science and Technology Policy, 1650 Pennsylvania Avenue NW., Washington, DC 20504; email:

kkoizumi@ostp.eop.gov; telephone 202–456–6133; FAX 202–456–6021. See also the RBM Working Group's Internet Web site located at: *http://rbm.nih.gov.*

SUPPLEMENTARY INFORMATION: One of the RBM Subcommittee's priority areas is to create greater consistency in the administration of Federal research awards. Given the increasing complexity of interdisciplinary and interagency research, it is important for Federal agencies to manage awards in a similar fashion. On behalf of the RBM Subcommittee, the NSF has agreed to continue to serve as the "sponsor" of this updated Federal-wide format.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of agencies funding research and research-related activities, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected from respondents, including through the use of automated collection techniques or other forms of information technology; and (c) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

After obtaining and considering public comment, NSF on behalf of the RBM, will prepare the submission requesting OMB clearance of this collection for no longer than three years.

I. Background

The NSF, on behalf of the National Science & Technology Council's Research Business Models Interagency Working Group, is soliciting public comment on a revised standardized RPPR format. The NSF has agreed to continue to serve as the "sponsor" of this Federal-wide format for receipt of comments under this interagency initiative. After an updated format is adopted, Agencies will be required to submit, through the PRA, revisions to their currently approved performance progress reporting information collections in order to comply with the updated RPPR format.

Development and maintenance of a standardized RPPR is an initiative of the Research Business Models (RBM) Interagency Working Group of the Committee on Science (CoS), a Committee of the National Science and Technology Council (NSTC). The objective of this initiative is to implement and maintain a uniform format for reporting performance on Federally-funded research projects. Prior to the implementation of a uniform format, Federal agencies utilized a variety of formats for reporting progress on activities supported by research grants, though similar information was usually collected. These variations increased administrative effort and costs for recipients of Federal awards and made it difficult to compare research programs across government. This format directly benefits award recipients by making it easier for recipients to administer Federal grant programs through standardization of the types of research information required in performance reports.

The RPPR format was approved by the Office of Management and Budget (OMB) and the Office of Science and Technology Policy (OSTP), which released the Policy on Research Performance Progress Report in April 2010. The OMB/OSTP-issued Policy specified that the RPPR would be used by agencies and awarding offices that support research and research-related activities for use in submission of required annual or other interim performance reporting on grants and cooperative agreements. The RPPR is intended to address progress for the most recently completed period, at the frequency required or designated by the sponsoring agency. As indicated in the **Federal Register** [75 FR 1816–1819, January 13, 2010], the development of a final RPPR format would take place upon completion of the interim RPPR exercise.

A working group was established in March 2013 to handle development of a final RPPR format. Representatives from thirteen different departments/agencies comprised the group. Drawing from agency experiences and perspectives, the group discussed potential revisions to the RPPR format. The group recommended changes in order to allow the format to be used for submission of both interim and final progress reports. Several amendments have been inserted throughout the document to update it, though the proposed revised format retains the same overall structure as the original format.

Each of the categories specified is a separate reporting component. Federal agencies will direct recipients to report on the mandatory category and may also require reporting on optional categories, as appropriate. Recipients will not be required or expected to report on each of the questions or items listed under a particular category. They will be advised to state "Nothing to report" if they have nothing significant to report.

Agencies will utilize the standard instructions that have been developed for each category, but may provide additional program-specific instructions necessary to clarify a requirement for a particular program.

Agencies also may develop additional agency- or program-specific reporting categories and instructions (e.g., the National Institutes of Health may need to collect additional information on clinical trial awards); however, to maintain maximum uniformity, agencies are instructed to minimize the degree to which they supplement the standard categories.

II. Proposed Revisions to Report Format

The proposed revised format for interim and final performance progress reporting on grants and cooperative agreements awarded under research programs is available on the NSF Web site at: *http://www.nsf.gov/bfa/dias/policy/rppr/index.jsp.*

Revisions to the format have been made so that it may be used for both interim and final reports. Each report will cover one reporting period (annual or other interim period at the frequency required or designated by the agency). Instructions that are specific to the final reporting period will be included as applicable in the format. The recommendation is made to maintain consistency between interim and final reporting for both agencies and recipients.

All existing categories will be retained, and one new category is proposed. The new optional category will be entitled "Project Outcomes" and is intended to be completed as part of the final report. This category enables agencies to collect a summary of outcomes or findings of the award, thereby capturing cumulative information needed by several agencies.

Language was revised throughout the report. First, language was clarified where necessary. Second, terminology was made more inclusive of research-related activities. Third, verbs were made past tense where appropriate.

New information, questions, or instructions were inserted throughout the format. More examples of "other products" were added. The Participants section now has a question on active other support. The Impact section contains a new question on the impact on teaching and educational experiences. Finally, a new, optional category, Project Outcomes, was added.

To accompany the revisions in the RPPR Format, amendments were also made to the RPPR Data Dictionary. New or amended data elements or fields correspond to their counterparts in the RPPR Format.

Dated: March 4, 2014.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–05012 Filed 3–10–14; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Public Forum—Cruise Ships: Examining Safety, Operations and Oversight

On Tuesday and Wednesday, March 25–26, 2014, The National Transportation Safety Board (NTSB) will convene a forum titled, "Cruise Ships: Examining Safety, Operations and Oversight." The forum will begin at 9:00 a.m. on both days and is open to all. Attendance is free, and no registration is required. NTSB Chairman Deborah A.P. Hersman will serve as the Presiding Officer of the forum, and all five NTSB board members will serve as members of the Board of Inquiry. The forum is organized into six issue areas:

- Regulatory Framework
- Accident Investigations
- Ship Design and Fire Protection
- Vessel Operations
- Emergency Response
- Corporate Oversight

The forum will also explore some recent high-profile accidents. The forum's goal is to encourage dialogue among industry stakeholders, regulators, and the general public to better understand cruise ship safety and oversight. Invited panelists will include regulators such as the U.S. Coast Guard, vessel owners and operators, researchers and industry groups. Below is the preliminary agenda:

Tuesday, March 25, 2014 (9:00 a.m.–5:00 p.m.)

1. Opening Statement by Chairman Hersman.
2. Opening presentation by the U.S. Coast Guard.
3. Introduction of the Technical Panels and Panelists.
4. Presentations from Panels One, Two, and Three and questions from the Board of Inquiry and the Technical Panels.
5. Closing Statement by Chairman Hersman

Wednesday, March 26, 2014 (9:00 a.m.–5:00 p.m.)

1. Opening Statement by Chairman Hersman.
2. Opening presentation by the Cruise Lines International Association.
3. Introduction of the Technical Panels and Panelists.
4. Presentations from Panels Four, Five, and Six and questions from the Board of Inquiry and the Technical Panels.
5. Closing statement by Chairman Hersman.

The full agenda and a list of participants can be found at: *http://www.ntsb.gov/news/events/2014/cruiseshipforum/index.html.*

The forum will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza E. SW., Washington, DC. The public can view the forum in person or by live webcast at *http://www.ntsb.gov.* Webcast archives are generally available by the end of the next day following the forum, and webcasts are archived for a period of 3 months after the date of the event.

Individuals requiring reasonable accommodation and/or wheelchair access directions should contact Ms. Rochelle Hall at *Rochelle.hall@ntsb.gov* or by telephone at (202) 314–6305 by Wednesday, March 19, 2014.

NTSB Media Contact: Eric Weiss—*eric.weiss@ntsb.gov.*

NTSB Forum Managers: Liam LaRue—*liam.larue@ntsb.gov,* Barry Strauch, Ph.D.—*barry.strauch@ntsb.gov.*

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2014–05150 Filed 3–10–14; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0226]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on November 4, 2013 (78 FR 66076).

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:* NRC Form 4, "Cumulative Occupational Dose History."
3. *Current OMB approval number:* 3150–0005.
4. *The form number if applicable:* NRC Form 4.
5. *How often the collection is required:* On occasion. The NRC does not collect NRC Form 4. However, NRC inspects the NRC Form 4 records at NRC-licensed facilities.
6. *Who will be required or asked to report:* NRC licensees who are required to comply with Part 20 of Title 10 of the *Code of Federal Regulations* (10 CFR).
7. *An estimate of the number of annual responses:* 227,846 (223,700 third party disclosure + 4,146 recordkeepers).
8. *The estimated number of annual respondents:* 4,146.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 31,234 (24,523 recordkeeping + 6,711 third party disclosure).
10. *Abstract:* The NRC Form 4 is used to record the summary of an occupational worker's cumulative occupational radiation dose, including prior occupational exposure and the current year's occupational radiation exposure. The NRC Form 4 is used by licensees, and inspected by the NRC, to ensure that occupational radiation doses do not exceed the regulatory limits specified in 10 CFR 20.1501.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 10, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Danielle Y. Jones, Desk Officer, Office of Information and Regulatory Affairs (3150–0005), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Danielle_Y_Jones@omb.eop.gov* or

submitted by telephone at 202–395–1741.

The Acting NRC Clearance Officer is Kristen Benney, telephone: 301–415–6355.

Dated at Rockville, Maryland, this 5th day of March 2014.

For the Nuclear Regulatory Commission.

Brenda Miles,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–05174 Filed 3–10–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0148]

Proposed Ross Project in Crook County Wyoming for In-Situ Leach Uranium Milling Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final supplemental environmental impact statement; issuance.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) published the Final Supplemental Environmental Impact Statement (SEIS) (NUREG–1910, Supplement 5) for the Ross *In-Situ* Uranium Recovery (ISR) Project (Ross Project). By letter dated January 4, 2011, Strata Energy, Inc. (Strata) submitted an application to the NRC for a new source and byproduct materials license for the Ross Project, which Strata proposes to be located in Crook County, Wyoming. Strata is proposing to recover uranium from the Ross Project site using the ISR process.

ADDRESSES: Please refer to Docket ID NRC–2011–0148 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to: *http://www.regulations.gov* and search for Docket ID NRC–2011–0148. Address questions about NRC dockets to Ms. Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, or 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The Final SEIS (NUREG–1910, Supplement 5) is available in ADAMS under Accession No. ML14056A096.
- *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: Johari Moore, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7694, email: *Johari.Moore@nrc.gov.*

SUPPLEMENTARY INFORMATION: Under the NRC's environmental protection regulations in Part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR), that implement the National Environmental Policy Act of 1969 (NEPA), preparation of an Environmental Impact Statement (EIS) or supplement to an EIS (SEIS) is required for issuance of a license to possess and use source material for uranium milling (see 10 CFR 51.20(b)(8)).

In May 2009, the NRC staff issued NUREG–1910, "Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities" (herein referred to as the GEIS). In the GEIS, NRC assessed the potential environmental impacts from construction, operation, aquifer restoration, and decommissioning of an ISR facility located in four specific geographic regions of the western United States. The proposed Ross Project is located within the Nebraska-South Dakota-Wyoming Uranium Milling Region identified in the GEIS. This Final SEIS supplements the GEIS and incorporates by reference relevant portions from the GEIS, and uses site-specific information from the applicant's license application and other independent sources to fulfill the requirements in 10 CFR 51.20(b)(8).

The Final SEIS was prepared in response to an application submitted by Strata by letter dated January 4, 2011. The applicant proposes the construction, operation, aquifer restoration, and decommissioning of an ISR facility to recover uranium.

The Final SEIS was prepared by the NRC and its contractor, Attenuation Environmental Company (AEC), in cooperation with the U.S. Bureau of Land Management (BLM), in compliance with NEPA, and the NRC's regulations for implementing NEPA (10 CFR Part 51).

The proposed Ross Project will be located approximately 34.6 kilometers (km) (21.5 miles [mi]) north of the town of Moorcroft, Wyoming. The proposed facility would encompass approximately 697 hectares (ha) (1,721 acres [ac]).

The Final SEIS is being issued as part of the NRC's process to decide whether to issue a license to Strata pursuant to 10 CFR Part 40. In this Final SEIS, the NRC staff has assessed the potential environmental impacts from the construction, operation, aquifer restoration, and decommissioning of the proposed Ross Project. The NRC staff assessed the impacts of the proposed action and its alternatives on land use; historical and cultural resources; visual and scenic resources; climatology, meteorology and air quality; geology, minerals and soils; water resources; ecological resources; socioeconomics; environmental justice; noise; traffic and transportation; public and occupational health and safety; and waste management. Additionally, the Final SEIS analyzes and compares the benefits and costs of the proposed action. In preparing this Final SEIS, the NRC staff also considered, evaluated, and addressed the public comments received on the Draft SEIS published on March 29, 2013 (78 FR 19330). Appendix B of the Final SEIS captures the public's comments and the NRC's responses.

In preparing the Final SEIS, the NRC staff evaluated site-specific data and information from the Ross Project to determine if Strata's proposed activities and the site characteristics were consistent with those evaluated in the GEIS. The NRC then determined which relevant sections of, and impact conclusions in, the GEIS could be incorporated by reference. The NRC staff also determined if additional data or analysis was needed to assess the potential environmental impacts for a specific environmental resource area. The NRC documented its assessments and conclusions in the Final SEIS.

In addition to the action proposed by Strata, the NRC staff addressed the no-action alternative, as well as the North Ross site alternative, in which the central processing plant (CPP), auxiliary and support buildings and structures,

and surface impoundments would be located at a different location to the north of the Proposed Project. All the alternatives were analyzed in detail. The no-action alternative serves as a baseline for comparison of the potential environmental impacts of the proposed action.

After weighing the impacts of the proposed action and comparing the alternatives, the NRC staff, in accordance with 10 CFR 51.91(d), sets forth its recommendation regarding the proposed action. Unless safety issues mandate otherwise, the NRC staff recommends that the proposed action be approved (*i.e.*, the NRC should issue a source material license for the proposed Ross Project).

The Final SEIS for the proposed Ross Project may also be accessed on the internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/* by selecting "NUREG–1910" and then "Supplement 5." Additionally, a copy of the Final SEIS will be available at the following public libraries:

Crook County Library, Hulett Branch, 401 Sager Street, Hulett, WY 82720.

Crook County Library, Moorcroft Branch, 105 East Converse, Moorcroft, WY 82721.

Dated at Rockville, Maryland, this day 27 of February 2014.

For the Nuclear Regulatory Commission.

Aby Mohseni,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2014–05260 Filed 3–10–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of The ACRS Subcommittee on Reliability & Pra; Notice of Meeting

The ACRS Subcommittee on Reliability & PRA will hold a meeting on March 20, 2014, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to discuss security related information pursuant to 5 U.S.C. 552b(c)(3). The agenda for the subject meeting shall be as follows:

Thursday, March 20, 2014—8:30 a.m. Until 12:00 p.m.

The Subcommittee will review Chapter 19 and Section 17.4 of the Standard Review Plan for the review of Safety Analysis Reports for Nuclear Power Plants. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on November 8, 2013, (78 CFR 67205–67206).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: March 3, 2014.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2014–05288 Filed 3–10–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on March 19, 2014, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 19, 2014—8:30 a.m. Until 5:00 p.m.

The Subcommittee will review selected chapters of the safety evaluation report associated with the early site permit application for the PSEG site. PSEG Power, LLC and PSEG Nuclear, LLC are referred to as PSEG. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844- or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were

published in the **Federal Register** on November 8, 2013, (78 CFR 67205–67206).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: March 5, 2014.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2014–05280 Filed 3–10–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: NRC will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on May 8–9, 2014. A sample of agenda items to be discussed during the public session includes: (1) A discussion on possible revisions to the NRC Medical Policy Statement; (2) an update on medical-related events; (3) a discussion on amendments to the ACMUI Bylaws; (4) an update on the status of the research project related to the release of patients following iodine-131 therapy; and (5) a presentation on NNSA's efforts related to molybdenum-99 production. The agenda is subject to change. The current agenda and any updates will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2014.html,* or by emailing Ms. Sophie Holiday at the contact information below.

Purpose: Discuss issues related to 10 CFR Part 35 Medical Use of Byproduct Material.

Date and Time for Closed Sessions: May 08, 2014, from 7:30 a.m. to 8:30 a.m. and May 09, 2014 from 7:30 a.m. to 9:00 a.m. and 3:30 p.m. to 4:00 p.m. The session on May 08, 2014 will be closed for badging and enrollment for new members to the ACMUI. Both sessions on May 09, 2014 will be closed for ACMUI training.

Date and Time for Open Sessions: May 08, 2014, from 8:30 a.m. to 3:30 p.m. and May 09, 2014, from 9:00 a.m. to 3:30 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T2–B3, 11545 Rockville Pike, Rockville, Maryland 20852.

Public Participation: Any member of the public who wishes to participate in the meeting in person or via phone should contact Ms. Holiday using the information below. The meeting will also be webcast live: *video.nrc.gov.*

Contact Information: Sophie J. Holiday, email: *sophie.holiday@nrc.gov,* telephone: (301) 415–7865.

Conduct of the Meeting

Bruce R. Thomadsen, Ph.D., will chair the meeting. Dr. Thomadsen will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Holiday at the contact information listed above. All submittals must be received by May 1, 2014, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's Web site *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2014.html* on or about June 20, 2014.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Holiday of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10 of the *Code of Federal Regulations,* Part 7.

Dated: March 5, 2014.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2014–05265 Filed 3–10–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0040]

Monitoring of Neutron-Absorbing Materials In Spent Fuel Pools

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft generic letter; public meeting and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing this draft generic letter to address degradation of neutron-absorbing materials in the spent fuel pool (SFP). The NRC has determined that it is necessary to obtain plant-specific information requested in the draft generic letter so that the NRC can determine if the degradation of the neutron-absorbing materials in the SFP is being managed to maintain reasonable assurance that the materials are capable of performing their intended safety function, and if the licensees are in compliance with the regulations.

DATES: Submit comments by May 12, 2014. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure 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–2014–0040. 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: Scott Krepel, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–302–0399; email: *Scott.Krepel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0040 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0040.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the ADAMS Public Documents Collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0040 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

The NRC is issuing Generic Letter NRC–2014–0040, "Monitoring of Neutron-Absorbing Materials in Spent Fuel Pools," (ADAMS Accession No. ML13100A086) to request submittal of information from the stated licensees regarding the credited neutron-absorbing materials in the spent fuel pool (SFP) and associated surveillance or monitoring programs. Recent operating experience and regulatory actions have shown some gaps in the NRC knowledge base and regulatory guidance associated with management of the effects of aging on the neutron-absorbing materials in the SFP. Follow-up investigations of the identified gaps resulted in some NRC concerns with existing methods used in the industry to ensure compliance with the nuclear criticality safety (NCS) requirements in § 50.68 of Title 10 of the *Code of Federal Regulations* (10 CFR) and in General Design Criterion 62 (found in Appendix A of 10 CFR Part 50). In light of recent findings related to neutron-absorbing material degradation and uncertainties in the tools used to monitor the current condition of neutron-absorbing materials in the SFP, the NRC decided to request detailed information in order to verify compliance with the applicable NCS requirements and to determine if any further regulatory action is necessary. The draft generic letter contains a more detailed discussion of the issues involved and the information being requested.

III. Cumulative Effects of Regulation

The NRC is considering the cumulative effects of regulation (CER) as they relate to this Generic Letter. The CER considers the challenges licensees face in addressing the implementation of new regulatory positions, programs, and requirements (e.g., rulemaking, guidance, backfits, inspections). The CER initiative stems from the total burden imposed on licensees by the NRC from simultaneous or consecutive regulatory actions that can adversely affect the licensee's capability to implement those requirements while continuing to operate or construct its facility in a safe and secure manner. The NRC proposed several rulemaking process enhancements to address CER in SECY–11–0032, "Consideration of the Cumulative Effects of Regulation in the Rulemaking Process," dated October 11, 2011 (ADAMS Accession No. ML112840466). In SECY–12–0137, "Implementation of the Cumulative Effects of Regulation Process Changes," dated October 5, 2012 (ADAMS Accession No. ML12223A162) built upon the recommendations in SECY–11–0032. In its Staff Requirements Memorandum to SECY–12–0137 (ADAMS Accession No. ML13071A635), the Commission directed the staff to, among other items, "continue to develop and implement outreach tools that will allow NRC to consider more completely the overall impacts of multiple rules, orders, generic communications, advisories, and other regulatory actions on licensees and their ability to focus effectively on items of greatest safety importance."

With regard to this generic letter, the NRC requests that licensees comment about any CER challenges they may face. Specifically, the NRC requests comment on the following questions:

a. In light of any current or projected cumulative effects, does this generic letter request provide sufficient time for licensees to respond with the information requested, including any need to develop this information through supporting engineering calculation or analyses?

b. If a current or projected cumulative effect poses a significant challenge, what should be done to address it? For example, if more time is required to develop and provide the information, what period of time is sufficient? Are there equally effective alternatives to providing the requested information to the NRC that reduce the cumulative effects?

c. Do other (NRC or other regulatory agency) regulatory actions (e.g., Orders, rules, generic letter, bulletins, 50.54(f) requests) influence licensee responses to this draft generic letter? If so what are they and do you have a suggested approach to reduce the cumulative effects in light of these other regulatory actions?

d. Are there other projects that licensees are undertaking, plan to undertake, or should be undertaking that provide greater safety benefit, that might be displaced or delayed as a result of the expenditure of effort and resources to respond to this generic letter?

e. Are there unintended consequences associated with responding to this generic letter at this time?

f. Please comment on the NRC's supporting justification for this generic letter.

IV. Public Meeting

The NRC plans to hold an informational public meeting approximately 45 days into the public comment period to discuss draft Generic Letter NRC–2014–0040, "Monitoring of Neutron-Absorbing Materials in Spent Fuel Pools", and to obtain feedback from members of the public. The public meeting will be transcribed by a court reporter. The public meeting notice will be made available electronically in ADAMS and posted on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm*. The agenda for the public meeting will be noticed no fewer than 10 days prior to the meeting on the Public Meeting Schedule Web site. Any meeting updates or changes will be made available on this Web site. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been cancelled or rescheduled, and the time allotted for public comments can be obtained from the Public Meeting Schedule Web site. Comments regarding the draft Generic Letter must be submitted in accordance with paragraph I.B of this document. Comments from the public meeting will not be considered as official comments to this **Federal Register** notice.

Dated at Rockville, Maryland, this 27th day of February, 2014.

For the Nuclear Regulatory Commission.

Sheldon Stuchell,

Acting PGCB Branch Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–05236 Filed 3–10–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0230]

Draft Fiscal Years 2014–2018 Strategic Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; correction and supplemental information.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that appeared in the **Federal Register** on March 5, 2014. The notice notified the public of the availability of draft NUREG–1614, Volume 6, "U.S. Nuclear Regulatory Commission Strategic Plan, Fiscal Years 2014–2018." This action is necessary to correct the NRC's Agencywide Documents Access and Management System (ADAMS) accession number for draft NUREG–1614, and to notify the public that the draft Strategic Plan can be found on the NRC's public Web site at *http://www.nrc.gov/about-nrc/plans-performance/draft-strategic-plan-2014-2018.html.*

DATES: This correction is effective on March 11, 2014.

ADDRESSES: Please refer to Docket ID NRC–2013–0230 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0230. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.
- *NRC's 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.
- *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.

The NRC's draft Strategic Plan may be viewed online on the NRC's Public Web site at *http://www.nrc.gov/about-nrc/plans-performance/draft-strategic-plan-2014-2018.html.*

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone: 301–287–0949; email: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is correcting the ADAMS accession number for draft NUREG–1614 in the notice published on March 5, 2014 (79 FR 12531). In Fr. Doc. 2014–04830, on page 12531, in the second column; second bullet under Section A., Accessing Information; last sentence; "ML13254A234" is corrected to read "ML14023A605."

The NRC is notifying the public that the draft Strategic Plan can be found on the NRC's public Web site at *http://www.nrc.gov/about-nrc/plans-performance/draft-strategic-plan-2014-2018.html.*

Dated at Rockville, Maryland, this 6th day of March 2014.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2014–05240 Filed 3–10–14; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Application for U.S. Flag Recognition Benefit for Deceased Federal Civilian Employees, OPM 1825

AGENCY: Office of Personnel Management.

ACTION: 30-day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a new information collection request (ICR) 3206–NEW, Application for U.S. Flag Recognition Benefit for Deceased Federal Civilian Employees. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 17, 2013 at 78 FR 36314 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until April 10, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Civilian Service Recognition Act of 2011 (Pub. L. 112–73) authorizes an agency to furnish a United States flag on behalf of an employee who dies of injuries incurred in connection with his/her employment under specified circumstances. OPM is issuing guidance and final regulations to implement the Civilian Service Recognition Act of 2011. The guidance and regulations will assist agencies in administering a United States flag recognition benefit for fallen Federal civilian employees. The guidance and regulations describe the eligibility requirements and procedures to request a flag.

OPM Form OPM 1825, Application for U.S. Flag Recognition Benefit for Deceased Federal Civilian Employees, may be used to determine deceased Federal employee and beneficiary (e.g., family member of a deceased employee) eligibility for issuance of a U.S. flag. The form may be used by any Federal entity and use of the form is at agency discretion. Agencies equipped to accept electronic signatures may use an electronic version of the form.

Analysis

Agency: Office of Personnel Management.

Title: Application for U.S. Flag Recognition Benefit for Deceased Federal Civilian Employees.

OMB Number: 3206–NEW.

Affected Public: Individuals or households.

Number of Respondents: 10.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 2 hours.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–05277 Filed 3–10–14; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from January 1, 2014 to January 31, 2014.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A authorities to report during January 2014.

Schedule B

No Schedule B authorities to report during January 2014.

Schedule C

The following Schedule C appointing authorities were approved during January 2014.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Foreign Agricultural Service	Confidential Assistant	DA140023	1/13/2014
	Farm Service Agency	State Executive Director	DA140024	1/13/2014
	Office of Under Secretary for Natural Resources and Environment.	Special Assistant	DA140025	1/13/2014
Department of Commerce	Office of the Under Secretary	Senior Advisor	DC140021	1/3/2014
		Special Assistant	DC140049	1/30/2014
	Office of Public Affairs	Deputy Director of Public Affairs	DC140023	1/9/2014
	Office of Assistant Secretary for Legislative and Intergovernmental Affairs.	Associate Director of Legislative Affairs.	DC140024	1/9/2014
	Office of the Chief of Staff	Confidential Assistant	DC140031	1/14/2014
Commodity Futures Trading Commission.	Office of the Chairperson	Executive Assistant	CT140002	1/16/2014
Department of Defense	Washington Headquarters Services.	Defense Fellow	DD140019	1/13/2014
Department of Energy	National Nuclear Security Administration.	Deputy Press Secretary	DE140022	1/15/2014
Federal Housing Finance Agency	Office of the Director	Executive Advisor/Chief of Staff	HA140001	1/7/2014

Agency name	Organization name	Position title	Authorization No.	Effective date
		Special Advisor on Strategic Decisions and Governmental Agency Relations.	HA140002	1/13/2014
		Special Advisor on Strategic Decisions and Industry Relations.	HA140004	1/13/2014
Federal Trade Commission	Office of the Chairman	Director, Office of Public Affairs	FT140005	1/13/2014
General Services Administration	Mid-Atlantic Region	Special Assistant	GS140005	1/14/2014
Department of Health and Human Services.	Office of Intergovernmental and External Affairs.	Special Assistant	DH140017	1/2/2014
	Office of the Assistant Secretary for Health.	Special Assistant	DH140020	1/10/2014
	Office of the Secretary	Special Assistant	DH140019	1/24/2014
Department of Homeland Security	Office of the Chief of Staff	Deputy White House Liaison	DM140031	1/8/2014
	Office of the Under Secretary for National Protection and Programs Directorate.	Confidential Assistant	DM140032	1/23/2014
	Office of the Assistant Secretary for Public Affairs.	Strategic Communications Liaison	DM140027	1/27/2014
	Office of the Under Secretary for Intelligence and Analysis.	Special Advisor	DM140043	1/27/2014
Department of the Interior	Bureau of Land Management	Advisor	DI140012	1/24/2014
	Bureau of Ocean Energy Management.	Advisor	DI140015	1/30/2014
Department of Justice	Office on Violence Against Women.	Program Specialist	DJ140020	1/10/2014
	Office of Public Affairs	Deputy Director	DJ140023	1/23/2014
Department of Labor	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Officer	DL140013	1/14/2014
National Aeronautics and Space Administration.	Office of Communications	Special Assistant	NN140012	1/16/2014
National Transportation Safety Board.	Office of Board Members	Special Assistant	TB140001	1/16/2014
Office of the United States Trade Representative.	Office of the United States Trade Representative.	Deputy Assistant United States Trade Representative for Public and Media Affairs.	TN140002	1/9/2014
Small Business Administration	Office of Congressional and Legislative Affairs.	Deputy Assistant Administrator for Congressional and Legislative Affairs.	SB140006	1/9/2014
	Office of the General Counsel	Deputy General Counsel	SB140007	1/31/2014
Department of State	Office of the Global Women's Issues.	Staff Assistant	DS140023	1/15/2014
	Office of the Secretary	Senior Advisor	DS140022	1/16/2014
		Staff Assistant	DS140016	1/24/2014
	Bureau of East Asian and Pacific Affairs.	Staff Assistant	DS140025	1/16/2014
	Bureau for Education and Cultural Affairs.	Special Assistant	DS140012	1/17/2014
	Bureau of Western Hemisphere Affairs.	Deputy Assistant Secretary	DS140027	1/17/2014
	Bureau of Economic and Business Affairs.	Staff Assistant	DS140053	1/29/2014
Department of Transportation	Assistant Secretary for Governmental Affairs.	Director of Governmental Affairs	DT140012	1/9/2014
	Office of the Secretary	Associate Director for Scheduling and Advance (2).	DT140013	1/9/2014
			DT140014	1/9/2014
	Assistant Secretary for Transportation Policy.	Senior Policy Advisor	DT140015	1/13/2014
	Secretary	Special Assistant for Scheduling and Advance.	DT140016	1/24/2014
Department of the Treasury	Secretary of the Treasury	Deputy Executive Secretary	DY140030	1/9/2014
		Deputy White House Liaison	DY140032	1/22/2014
	Assistant Secretary (Economic Policy).	Special Assistant	DY140033	1/22/2014

The following Schedule C appointing authorities were revoked during January 2014.

Agency	Organization	Position title	Authorization No.	Vacate date
Department of Agriculture	Farm Service Agency	State Executive Director—Louisiana.	DA130208	1/3/2014
		Special Assistant	DA120008	1/12/2014
Department of Commerce	Office of the Deputy Secretary	Special Advisor	DC120035	1/6/2014
	Office of the Assistant Secretary for Industry and Analysis.	Senior Advisor	DC120157	1/7/2014
	Office of the Chief of Staff	Confidential Assistant	DC120152	1/14/2014
Department of Education	Office of the Deputy Secretary	Confidential Assistant	DB100023	1/6/2014
	Office for Civil Rights	Confidential Assistant	DB120030	1/8/2014
Department of Health and Human Services.	Office of the Assistant Secretary for Health.	Confidential Assistant	DH120132	1/11/2014
Department of Homeland Security	Office of the Under Secretary for National Protection and Programs Directorate.	Confidential Assistant	DM120123	1/10/2014
	Office of the Chief of Staff	Deputy White House Liaison	DM120075	1/11/2014
Department of Housing and Urban Development.	Office of the Secretary	Financial Analyst for Housing Finance.	DU120025	1/10/2014
	Office of Housing	Program Analyst	DU110033	1/25/2014
Department of Justice	Office on Violence Against Women.	Special Assistant	DJ120030	1/11/2014
Department of Labor	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Officer	DL130014	1/10/2014
Department of the Interior	Office of the Deputy Secretary	Counselor to the Deputy Secretary	DI120035	1/21/2014
Department of Transportation	Secretary	Special Assistant for Scheduling and Advance.	DT120066	1/11/2014
		Scheduler	DT130033	1/11/2014
	Assistant Secretary for Transportation Policy.	Associate Director for Transportation Policy.	DT120024	1/25/2014
Export–Import Bank	Office of Communications	Senior Advisor	EB110007	1/23/2014
National Endowment for the Arts	National Endowment for the Arts	Congressional Liaison	NA090003	1/4/2014
National Transportation Safety Board.	Office of Board Members	Special Assistant	TB100002	1/3/2014
Office of the Secretary of Defense	Washington Headquarters Services.	Defense Fellow	DD130080	1/25/2014

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–05279 Filed 3–10–14; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

January 2014 Pay Schedules

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: The President has signed an Executive Order containing the 2014 pay schedules for certain Federal civilian employees. Pursuant to the President's alternative plan issued under 5 U.S.C. 5303(b) and 5304(a) on August 30, 2013, the Executive Order authorizes a one percent across-the-board increase for statutory pay systems and provides that locality percentages remain at 2013 levels. This notice serves as documentation for the public record.

FOR FURTHER INFORMATION CONTACT: Lisa Dismond, Pay and Leave, Employee Services, U.S. Office of Personnel Management; (202) 606–2858 or pay-leave-policy@opm.gov.

SUPPLEMENTARY INFORMATION: On December 23, 2013, the President signed Executive Order 13655 (78 FR 80451), which implemented the January 2014 pay adjustments. The Executive Order provides an across-the-board increase of one percent in the rates of basic pay for the statutory pay systems.

The publication of this notice satisfies the requirement in section 5(b) of Executive Order 13655 that the U.S. Office of Personnel Management (OPM) publish appropriate notice of the 2014 locality payments in the **Federal Register.**

Schedule 1 of Executive Order 13655 provides the rates for the 2014 General Schedule (GS) and reflects a one percent increase from 2013. Executive Order 13655 also includes the percentage amounts of the 2014 locality payments, which remain at 2013 levels. (See Section 5 and Schedule 9 of Executive Order 13655.)

GS employees receive locality payments under 5 U.S.C. 5304. Locality payments apply in the United States (as defined in 5 U.S.C. 5921(4)) and its territories and possessions. In 2014, locality payments ranging from 14.16 percent to 35.15 percent apply to GS employees in the 34 locality pay areas. The 2014 locality pay area definitions can be found at: *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2014/locality-pay-area-definitions/.*

The 2014 locality pay percentages became effective on the first day of the first pay period beginning on or after January 1, 2014 (January 12, 2014). An employee's locality rate of pay is computed by increasing his or her scheduled annual rate of pay (as defined in 5 CFR 531.602) by the applicable locality pay percentage. (See 5 CFR 531.604 and 531.609.)

Executive Order 13655 establishes the new Executive Schedule (EX), which incorporates a one percent increase required under 5 U.S.C. 5318 (rounded to the nearest $100). By law, Executive Schedule officials are not authorized to receive locality payments.

Executive Order 13655 establishes the 2014 range of rates of basic pay for members of the Senior Executive Service (SES) under 5 U.S.C. 5382. The minimum rate of basic pay for the SES is $120,749 in 2014. The maximum rate of the SES rate range is $181,500 (level II of the Executive Schedule) for SES members who are covered by a certified

SES performance appraisal system and $167,000 (level III of the Executive Schedule) for SES members who are not covered by a certified SES performance appraisal system.

The minimum rate of basic pay for the senior-level (SL) and scientific and professional (ST) rate range was increased by 1 percent ($120,749 in 2014), which is the amount of the across-the-board GS increase. The applicable maximum rate of the SL/ST rate range is $181,500 (level II of the Executive Schedule) for SL or ST employees who are covered by a certified SL/ST performance appraisal system and $167,000 (level III of the Executive Schedule) for SL or ST employees who are not covered by a certified SL/ST performance appraisal system. Agencies with certified performance appraisal systems for SES members and employees in SL and ST positions also must apply a higher aggregate limitation on pay—up to the Vice President's salary ($233,000 in 2014.)

Note: Section 741 of title VII of division E of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76, January 17, 2014), froze pay rates for the Vice President and certain senior political appointees (including political appointees under the Executive Schedule and certain non-careeer SES members) at 2013 levels during calendar year 2014. The section 741 pay freeze does not affect the 2014 rates (or ranges) of pay officially established by Executive Order 13655. Rather, it temporarily bars covered officials from receiving pay increases based on the 2014 increases in those officially established rates (or ranges). For additional information on the 2014 pay freeze for certain senior political officials, see *http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5952*.

Executive Order 13655 provides that the rates of basic pay for administrative law judges (ALJs) under 5 U.S.C. 5372 are increased by 1 percent, rounded to the nearest $100 in 2014. The rate of basic pay for AL–1 is $157,100 (equivalent to the rate for level IV of the Executive Schedule). The rate of basic pay for AL–2 is $153,300. The rates of basic pay for AL–3/A through 3/F range from $104,900 to $145,100.

The rates of basic pay for members of Contract Appeals Boards are calculated as a percentage of the rate for level IV of the Executive Schedule. (See 5 U.S.C. 5372a.) Therefore, these rates of basic pay are increased by 1 percent in 2014.

On November 1, 2013, OPM issued a memorandum on behalf of the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget (OMB) and OPM) that continues GS locality payments for ALJs and certain other non-GS employee categories in 2014. By law, EX officials, SES members, employees in SL/ST positions, and employees in certain other equivalent pay systems are not authorized to receive locality payments. (Note: An exception applies to certain grandfathered SES, SL, and ST employees stationed in a nonforeign area on January 2, 2010.) The locality pay percentages continued for non-GS employees have not been increased in 2014. The memo is available at: *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/continuation-of-locality-payments-for-non-general-schedule-employees-nov-2013.pdf*.

On December 23, 2013, OPM issued a memorandum (CPM 2013–18) on the January 2014 pay adjustments. (See *http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5896*.) The memorandum transmitted Executive Order 13655 and provided the 2014 salary tables, locality pay areas and percentages, and information on general pay administration matters and other related information. The "2014 Salary Tables" posted on OPM's Web site at *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/* are the official rates of pay for affected employees and are hereby incorporated as part of this notice.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–05276 Filed 3–10–14; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71652; File No. TP 14–05]

Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to First Trust Dorsey Wright Focus Five ETF Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

March 5, 2014.

By letter dated March 5, 2014 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for First Trust Exchange-Traded Fund VI (the "Trust") on behalf of the Trust, First Trust Dorsey Wright Focus Five ETF (the "Fund"), any national securities exchange on or through which shares issued by the Fund ("Shares") may subsequently trade, First Trust Portfolios L.P., and persons or entities engaging in transactions in Shares (collectively, the "Requestors") requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended ("Exchange Act") and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares ("Creation Units").

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. The Fund seeks to track the performance of an underlying index developed by Dorsey, Wright & Associates called the Dorsey Wright Focus Five Index ("Index"). The Index is designed to provide targeted exposure to the five First Trust sector-based exchange traded funds ("ETFs") (*i.e.*, sector-based ETFs also advised by the investment advisor to the Fund) that the index provider believes offer the greatest potential to outperform other First Trust sector-based ETFs. The Index will take into account the performance of each of these sector or industry ETFs relative to one another. The Fund intends to operate as an "ETF of ETFs" by seeking to track the performance of its underlying Index through investing at least 90% of its net assets (plus the amount of any borrowings for investment purposes) in the ETFs which comprise the Index. Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner identical to the ETFs that are included in the Index.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value ("NAV") and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on the Nasdaq Stock Market LLC or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to

Section 19(b) of the Exchange Act (the "Exchange"); [1]

- All ETFs in which the Fund is invested will meet all conditions set forth in a relevant class relief letter,[2] or will have received individual relief from the Commission;
- At least 70% of the Fund is comprised of component securities that meet the minimum public float and minimum average daily trading volume thresholds under the "actively-traded securities" definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the Fund; provided, however, that if the Fund has 200 or more component securities, then 50% of the component securities must meet the actively-traded securities thresholds;
- All the components of the Index will have publicly available last sale trade information;
- The intra-day proxy value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange, the Fund's custodian, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of the Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Exchange or other market information provider will disseminate (i) continuously every 15 seconds throughout the trading day, through the facilities of the consolidated tape, the market value of a Share and (ii) every 15 seconds throughout the trading day, a calculation of the intraday indicative value of a Share;
- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by the Fund, ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;
- The Fund will invest solely in liquid securities;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between the Fund's market price and its NAV; and
- A close alignment between the market price of Shares and the Fund's NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[3] However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines "distribution" to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.[4]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with

[1] Further, the Letter states that should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Section 19(b) of the Exchange Act

[2] Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie Farr & Gallagher LLP (April 9, 2007); or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007).

[3] While ETFs operate under exemptions from the definitions of "open-end company" under Section 5(a)(1) of the 1940 Act and "redeemable security" under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

[4] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b–17 will not be implicated.[5]

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemption shall discontinue transactions involving the Shares of the Fund under the circumstances described above and in the Letter, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05177 Filed 3–10–14; 8:45 am]

BILLING CODE 8011–01–P

[5] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

[6] 17 CFR 200.30–3(a)(6) and (9).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 13, 2014 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

institution and settlement of administrative proceedings; an adjudicatory matter; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 6, 2014.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2014–05321 Filed 3–7–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71651; File No. SR–BATS–2014–003]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Modify the BATS Options Opening Process

March 5, 2014.

I. Introduction

On January 6, 2014, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the BATS options opening process. On January 16, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on January 23, 2014.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend its rules to allow the Exchange's equity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected a typographical error contained in its original submission related to its description of how the Exchange's Rule 20.6, governing Obvious Errors, currently operates.

[4] *See* Securities Exchange Act Release No. 71327 (January 16, 2014), 79 FR 3897 (January 23, 2014) ("Notice").

options trading platform ("BATS Options") to accept orders and quotes in all options series, other than index options, prior to the first transaction in the underlying security on the primary listing market and during a halt, as well as to establish a process for matching such orders immediately prior to the opening of trading in such options series. According to the Exchange, BATS Options currently does not accept any orders or quotes while trading is not open in an options class, including both prior to the first transaction in the underlying security on the primary listing market and during a trading halt in an options class.[5]

The Exchange proposes to begin accepting orders and quotes in all series at 8:00 a.m. Eastern Time and immediately upon a regulatory halt,[6] and would continue to accept orders and quotes until such time as the BATS Options opening process is initiated ("Order Entry Period").[7] Under the proposal, such orders (*i.e.*, those received prior to the opening process or during a regulatory halt) will be queued for participation in the opening process and will not be eligible for execution until the opening process occurs.[8] The Exchange proposes that limit orders queued during this time would be disseminated via the Options Price Reporting Authority ("OPRA") as non-firm quotes and via BATS Multicast PITCH, but that market orders queued during this time would not be disseminated.[9]

During a regulatory halt, the Exchange proposes that all orders would be cancelled unless an exchange member has entered instructions not to cancel its orders,[10] which would cause such orders to queue as part of the Order Entry Period.[11] However, when trading is halted, but it is not due to a regulatory halt, the Exchange proposes that there would be no Order Entry Period, all orders would be canceled, and trading would resume upon a determination by the Exchange that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.[12]

The Exchange also proposes a method for determining the opening price[13] of an options series at the time of opening or after trading resumes following a regulatory halt. Specifically, the Exchange proposes that, where there are no contracts in a particular series that would execute at any price at the time that the Exchange would determine the opening price, the Exchange would open such options for trading without determining an opening price.[14] Where there is a price at which at least one contract would execute, the Exchange proposes that, within thirty seconds after the first listing market transaction[15] or the regulatory halt being lifted, the Exchange would determine the opening price under proposed BATS Rule 21.7(a)(1) as follows: (i) The midpoint of the national best bid ("NBB") and the national best offer ("NBO" and, collectively, the "NBBO Midpoint");[16] (ii) where there is no NBBO Midpoint at a "Valid Price" (as explained below), the last "Print"[17] in the series; or (iii) where there is neither a NBBO Midpoint nor a Print at a Valid Price, the "Previous Close."[18]

The Exchange proposes that the opening price of an options series must be a Valid Price.[19] The Exchange further proposes that a NBBO Midpoint, a Print, and a Previous Close would constitute a Valid Price under proposed BATS Rule 21.7(a)(2) where: (i) There is no NBB and no NBO; (ii) there is either a NBB and no NBO or a NBO and no NBB and the price is equal to or greater than the NBB or equal to or less than the NBO; or (iii) there is both a NBB and NBO, the price is equal to or within the NBBO, and the price is less than a prescribed "Minimum Amount" away from the NBB or NBO for the series.[20] The Exchange proposes to establish the Minimum Amount thresholds based on the standards set forth in BATS Rule 20.6 governing Obvious Errors.[21]

Where there is no NBBO Midpoint, no Print, and no Previous Close at a Valid Price, the Exchange proposes to have the discretion, depending on the circumstances, to extend the Order Entry Period by 30 seconds or less, or open the series for trading.[22] Where the Exchange decides to open the series for trading pursuant to this discretion and there is at least one price level at which at least one contract of a limit order could be executed, the Exchange proposes to cancel all orders that are priced equal to or more aggressively than the midpoint of the most aggressively priced bid and the most aggressively priced offer.[23]

After the Exchange determines that an opening price is also a Valid Price, the Exchange proposes that orders and quotes that are priced equal to or more aggressively than the Opening Price would be matched based on price-time priority and in accordance with BATS Rule 21.8.[24] Further, under the proposal, all orders and quotes or portions thereof that are matched pursuant to the opening process would be executed at the opening price.[25] The Exchange also proposes that certain orders, or portions thereof, that are not executed during the opening process would be canceled.[26] For all other orders and quotes that have not been

[5] *Id.* According to the Exchange, BATS Options currently opens trading in options: (i) After the first transaction on the primary listing market after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan; or (ii) any time after 9:30 a.m. Eastern Time where the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts. *Id.* During a trading halt in an options class, the Exchange states that it currently cancels all orders and quotes, and trading does not resume until the Exchange determines that the conditions that led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading. *Id.*

[6] *See* proposed BATS Rule 21.7(a), defining "Regulatory Halt" as "trading being halted in an option series due to the primary listing market for the applicable underlying security declaring a regulatory trading halt, suspension, or pause with respect to such security."

[7] *See* Notice, *supra* note 4, at 3897.

[8] *Id.* The Exchange also notes that "Immediate or Cancel" orders ("IOCs") or "WAIT" orders will not be accepted for queuing prior to completion of the opening process. *Id. See also* BATS Rule 21.1(f)(2) and (4) (defining IOC and WAIT orders).

[9] *See* Notice, *supra* note 4, at 3897.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *See* proposed BATS Rule 21.7(a)(1) (defining "Opening Price" as "a single price at which a particular option series will be opened").

[14] *See* Notice, *supra* note 4, at 3897.

[15] *See* proposed BATS Rule 21.7(a) (defining "First Listing Market Transaction" as "the first transaction on the primary listing market after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan").

[16] The Exchange proposes that, where the NBBO Midpoint would result in an opening price in a sub-penny increment, the Exchange will use the next highest non sub-penny increment as the NBBO Midpoint. *See* Notice, *supra* note 4, at 3898.

[17] *See* proposed BATS Rule 21.7(a)(1)(B) (defining "Print" as "the last regular way print disseminated pursuant to the OPRA Plan after 9:30 a.m. Eastern Time").

[18] *See* proposed BATS Rule 21.7(a)(1)(C) (defining "Previous Close" as "the last regular way transaction from the previous trading day as disseminated pursuant to the OPRA Plan").

[19] *See* proposed BATS Rule 21.7(a)(1).

[20] The prescribed Minimum Amount away thresholds would vary based on the price of the NBB. *See* proposed BATS Rule 21.7(a)(2)(C) (laying out the applicable Minimum Amount thresholds). For example, if the NBB for an option series is below $2.00, the applicable Minimum Amount threshold would be $0.25. *Id.*

[21] *See* Notice, *supra* note 4, at 3898.

[22] *Id.*

[23] *Id.* (providing an example of how this would operate).

[24] *Id.*

[25] *Id.*

[26] *See* Notice, *supra* note 4, at 3898. Under the proposal, this provision would apply to: (i) limit orders that are priced equal to or more aggressively than the opening price; and (ii) market orders. *Id.*

executed or canceled, including where no orders are matched at the opening price, the Exchange proposes that such orders will become eligible for trading on BATS Options immediately following the completion of the opening process.[27]

The Exchange also proposes to add some additional clarity to how trading will open and resume following a trading halt for index options. First, the Exchange represents that it would open index options in exactly the same manner as they open currently—at 9:30 a.m. Eastern Time.[28] Second, the Exchange proposes that, where trading in index options is halted for any reason, BATS would open such options for trading upon the determination by the Exchange that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.[29] According to the Exchange, this too is how index options open after a trading halt under the current rules,[30] and the purpose of this change is to clarify that trading in index options is not subject to the opening process, described above, under proposed BATS Rule 21.7(a).[31]

Finally, the Exchange proposes to retain discretion to deviate from its standard opening process, including adjusting the timing of the opening process in any option class, when the Exchange believes it is necessary in the interests of a fair and orderly market.[32] Currently, in the event the underlying security has not opened within a reasonable time after 9:30 a.m. Eastern Time, the Exchange shall make an inquiry to determine the cause of the delay, and the Exchange can open trading in options contracts even if the underlying security has yet to open for trading on the primary listing market for such security if the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts.[33] In addition, the Exchange may delay the commencement of trading in any class of options in the interests of a fair and orderly market.[34] Under the proposal, the Exchange could open trading in options contracts prior to the first listing market transaction and also delay the commencement of trading in any class of options, so long as it is in the interests of a fair and orderly market, and the Exchange would have discretion to manage the Opening Process in the event of unanticipated circumstances occurring around 9:30 a.m. Eastern Time or a trading halt being lifted.[35]

III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[36] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[37] 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 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.

As described above, the Exchange proposes, among other things, to begin accepting orders and quotes for options series, other than index options, prior to the first transaction in the underlying security on the primary listing market and during certain trading halts. According to the Exchange, this will provide all Exchange members with greater control and flexibility with respect to entering orders and quotes by allowing them to enter orders and quotes beginning at 8:00 a.m. Eastern Time, rather than only after trading has opened for a particular option. Under the proposal, orders entered during the opening process or certain trading halts would queue, and all orders and quotes priced more aggressively than the opening price will be matched based on price-time priority and in accordance with existing BATS Rule 21.8. Further, all orders and quotes or portions thereof that are matched during the opening process will be executed at the opening price. The Commission notes that limit orders queued during the opening process would be disseminated via OPRA, which will contribute toward greater price discovery by providing additional information to the options market.

The Commission believes that permitting BATS to accept orders and quotes before 9:30 a.m. Eastern Time and during certain trading halts should benefit investors by providing them certainty as to when their orders and quotes can be submitted rather than having to monitor each options class individually. By offering this additional functionality to Exchange members, the Commission believes that the proposed rule change is reasonably designed to remove impediments to a free and open market. The Commission also notes that several other exchanges already permit their members to submit orders and quotes prior to 9:30 a.m. Eastern Time and during trading halts.[38]

As described above, the Exchange proposes to establish a method for determining an opening price for options, other than index options, and require that any opening price be a Valid Price. The opening price would be: (i) The NBBO Midpoint; (ii) where there is no NBBO Midpoint at a Valid Price, the Print; or (iii) where there is neither a NBBO Midpoint nor a Print at a Valid Price, the Previous Close. Accordingly, the Exchange will look to the most recently available market prices to determine the opening price, but will, in no case, permit an opening price that is not a Valid Price. To this end, the Exchange proposes to adopt Minimum Amount thresholds derived from the Exchange's obvious error rules to ensure that the opening price for an options series is, in the Exchange's view, appropriately priced. The Exchange believes that using these thresholds will prevent obvious error transactions by ensuring that the opening price will be within the Minimum Amount from either the NBB or NBO when there is both a NBB and NBO.[39] Accordingly, the Commission believes that the Exchange's proposal is reasonably designed to protect investors and the public interest by establishing an opening process that should limit an opening price to a price that should be related to the current market for an option. The Commission notes that, if the Exchange determines to open an option series for trading without determining an opening price and there is at least one price level at which at least one contract of a limit order could be executed, the Exchange would cancel all orders that are priced equal to or more aggressively than the midpoint of

[27] *See* Notice, *supra* note 4, at 3898–99.

[28] *See* Notice, *supra* note 4, at 3899.

[29] *Id.*

[30] *Id.* The Exchange also notes that the opening process for index options is not being changed by this proposed rule change. *Id.*

[31] *Id.*

[32] *Id.*

[33] *See* BATS Rule 21.7(b); Notice, *supra* note 4, at 3899.

[34] *See* BATS Rule 21.7(c); Notice, *supra* note 4, at 3899.

[35] *See* Notice, *supra* note 4, at 3899.

[36] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 15 U.S.C. 78f(b)(5).

[38] *See, e.g.*, NASDAQ Options Market Chapter VI, Section 2(a); NYSE Arca Rule 6.64; NYSE MKT Rule 952NY.

[39] *See* Notice, *supra* note 4, at 3899.

the most aggressively priced bid and the most aggressively priced offer, which should allow the Exchange to effectively open the series for trading.

The Commission further believes that the proposed opening process, including the ability to deviate from such opening process in the interests of a fair and orderly market, is consistent with the protection of investors and the public interest because it should help BATS open trading in options contracts in a fair and orderly manner. Specifically, the Commission believes that allowing members to enter orders for queuing should create a more orderly opening and facilitate price formation at the opening of trading because members will be able to enter orders and quotes in advance, rather than submitting them to the Exchange in a small amount of time. In addition, the Commission believes that the dissemination of this information prior to the opening of trading in options contracts should facilitate price discovery and create a more orderly opening process because members will have access to more information before their orders become executable.

Finally, the Commission believes that the Exchange's proposal relating to the opening, and re-opening after a trading halt, of index options is designed to protect investors and the public interest by clarifying the Exchange's rules without affecting their functionality.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change, as modified by Amendment No. 1 thereto (SR–BATS–2014–003), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05178 Filed 3–10–14; 8:45 am]

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[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71649; File No. 4–631]

Joint Industry Plan; Notice of Filing of the Seventh Amendment to the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

March 5, 2014.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")[1] and Rule 608 thereunder[2], notice is hereby given that, on February 24, 2014, NYSE Euronext, on behalf of New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC ("NYSE MKT"), and NYSE Arca, Inc. ("NYSE Arca"), and the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the "Participants"), filed with the Securities and Exchange Commission (the "Commission") a proposal to amend the Plan to Address Extraordinary Market Volatility ("Plan").[3] The proposal represents the seventh amendment to the Plan ("Seventh Amendment"), and reflects changes unanimously approved by the Participants. The Seventh Amendment to the Plan proposes to amend the Plan to extend the pilot period of the Plan to February 20, 2015 and makes changes to Appendix B of the Plan regarding when the Participants are required to submit specified summary data to the Commission. A copy of the Plan, as proposed to be amended, is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments from interested persons on the Seventh Amendment to the Plan.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Martha Redding, Chief Counsel, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated February 21, 2014 ("Transmittal Letter").

I. Rule 608(a) of Regulation NMS

A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in "NMS Stocks," as defined in Rule 600(b)(47) of Regulation NMS under the Act.[4] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.[5] These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.[6] The price bands would be calculated by the Securities Information Processors ("SIPs" or "Processors") responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[7] Those price bands would be based on a Reference Price[8] for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock would be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter[9]

[4] 17 CFR 242.600(b)(47). *See also* Section I(H) of the Plan.

[5] *See* Section V of the Plan.

[6] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan. *See* Exhibit A, *infra.*

[7] 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

[8] *See* Section I(T) of the Plan.

[9] As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (*i.e.*, stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (*i.e.*, all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a

below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the price bands would be calculated by applying double the Percentage Parameters.

The Processors would also calculate a Pro-Forma Reference Price for each NMS Stock on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price did not move by one percent or more from the Reference Price in effect, no new price bands would be disseminated, and the current Reference Price would remain the effective Reference Price. If the Pro-Forma Reference Price moved by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price would become the Reference Price, and the Processors would disseminate new price bands based on the new Reference Price. Each new Reference Price would remain in effect for at least 30 seconds.

When one side of the market for an individual security is outside the applicable price band, the Processors would be required to disseminate such National Best Bid [10] or National Best Offer [11] with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security would enter a Limit State,[12] and the Processors would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[13] All trading would immediately enter a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer. Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market did not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause, which would be applicable to all markets trading the security.

These limit up-limit down requirements would be coupled with trading pauses [14] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in the Plan, all trading centers [15] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

Under the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

As stated by the Participants in the Plan, the limit up-limit down mechanism is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks,[16] thereby protecting investors and promoting a fair and orderly market.[17] In particular, the Plan is designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[18]

The following summarizes the Seventh Amendment to the Plan and the rationale behind those changes:

Proposed Amendment

The Plan was initially approved for a one-year pilot, which began on April 8, 2013. Accordingly, the pilot period is currently scheduled to end on April 8, 2014. As initially contemplated, the Plan would have been fully implemented across all NMS Stocks within six months of initial Plan operations, which meant there would have been full implementation of the Plan for six months before the end of the pilot period. However, pursuant to the Fourth Amendment to the Plan, the Participants amended Section VIII.B of the Plan, which modified the implementation schedule of Phase II of the Plan to extend the time period when the Plan would fully apply to all NMS Stocks. Accordingly, the Plan was not implemented across all NMS Stocks until December 8, 2013.

In addition, pursuant to the Sixth Amendment to the Plan, which further modified the implementation schedule of Phase II of the Plan, the date for full implementation of the Plan was moved to February 24, 2014. Prior to February 24, 2014, the Plan will have only been in effect from 9:30 a.m. Eastern to 3:45 p.m. Eastern, and will not include the fifteen minutes of trading preceding the close. Accordingly, there will be less than two months of full operation of the Plan before the end of the pilot period.

The Participants do not believe that this short period of full implementation of the Plan will provide sufficient time for either the Participants or the Commission to assess the impact of the Plan and determine whether the Plan should be modified prior to approval on a permanent basis. Rather, the Participants believe that the pilot period should be extended to provide sufficient time to review data based on full implementation of the Plan and if necessary, propose modifications in connection with seeking to approve the Plan on a permanent basis.

Accordingly, the Participants propose to amend Section VIII.C of the Plan to extend the current one-year pilot, which is scheduled to end on April 8, 2014, to have the pilot set to end on February 20, 2015. The proposed new end date for the pilot would provide for a year of full implementation of the Plan before the pilot period ends. The Participants believe that this proposed pilot

Reference Price below $0.75 would be the lesser of (a) $0.15 or (b) 75 percent. *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012 ("First Amendment").

[10] 17 CFR 242.600(b)(42). *See also* Section I(G) of the Plan.

[11] *Id.*

[12] A stock enters the Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer. *See* Section VI(B) of the Plan.

[13] *See* Section I(D) of the Plan.

[14] The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[15] As defined in Section I(X) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Act.

[16] 17 CFR 242.600(b)(47).

[17] *See* Transmittal Letter, *supra* note 3.

[18] The limit up-limit down mechanism set forth in the Plan would replace the existing single-stock circuit breaker pilot. *See e.g.*, Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

extension is appropriate in the public interest, for the protection of investors and the maintenance of a fair and orderly market because it provides additional time to assess the operation of the Plan. The Participants further believe that the proposed amendment is consistent with the approval order for the Plan, in which the Commission stated that having a pilot period would allow "the public, the Participants, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis." [19]

Because the goal of the pilot period is to provide an opportunity to assess whether the Plan should be modified prior to approval on a permanent basis, the Participants further propose to amend Section III to Appendix B of the Plan to move the time by which the Participants would be required to submit assessments of the Plan operations. Under the current Plan, the time to provide such assessments is scheduled for two months prior to the end of the pilot period. As originally contemplated, such reports would therefore have been based on approximately four months' worth of data from full implementation of the Plan.

The Participants continue to believe that they would be able to assess the Plan based on a similar data set. The Participants further believe that providing the Commission with such assessments earlier than two months before the end of the pilot period would provide additional time for the Commission to review such assessments and better inform any determination of whether the Plan should be modified prior to approval on a permanent basis. The Participants further believe that revising the time when such assessments would be provided to the Commission would provide the Participants with sufficient time to conduct such assessments. Accordingly, the Participants propose to amend Section III of Appendix B of the Plan to delete the requirement that the assessments be provided at least two months prior to the end of the pilot period, and replace it with a specified date when such assessments shall be provided. The Participants propose that the assessments be provided by September 30, 2014. The Participants believe that this proposed new date for submission of assessments is appropriate in the public interest, for the protection of investors, and the maintenance of a fair and orderly market because it will serve the goals of having sufficient amount of data to review, consistent with the current Plan, providing time for the Participants to complete their assessments of the data, and providing time for the Commission to review such assessments with enough time remaining within the proposed new pilot period to determine whether to modify the Plan prior to approval on a permanent basis.

The Participants note that the amended version of the Plan also includes the revised Appendix A—Schedule 1, which was updated for trading beginning January 3, 2014. As set forth in Appendix A—Percentage Parameters, the Primary Listing Exchange update Schedule 1 to Appendix A semi-annually based on the fiscal year and such updates do not require a Plan amendment.

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor's obligations will change, as set forth in detail in the Plan.

C. Implementation of Plan

The initial date of the Plan operations was April 8, 2013.

D. Development and Implementation Phases

The Plan will be implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation began on April 8, 2013 and was completed on May 3, 2013. Implementation of Phase II of the Plan began on August 5, 2013 and is scheduled to be completed on February 24, 2014. Pursuant to this proposed amendment, the Participants propose to extend the pilot period so that it is set to end February 20, 2015.

E. Analysis of Impact on Competition

The Participants state that the proposed Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants state that they have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

Each of the Plan's Participants has executed a written amended Plan.

H. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities Exchange or national securities association under the Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

The Plan does not include specific provisions regarding resolution of disputes between or among Participants. Section III(C) of the Plan provides for each Participant to designate an individual to represent the Participant as a member of an Operating Committee.[20] No later than the initial date of the Plan, the Operating Committee would be required to designate one member of the Operating Committee to act as the Chair of the Operating Committee. The Operating Committee shall monitor the procedures established pursuant to the Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS under the Act.[21]

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[19] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498, 33508 (June 6, 2012).

[20] *See* Section I(J) of the Plan.

[21] 17 CFR 242.608.

arguments concerning the foregoing, including whether the Seventh Amendment to the Plan 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 4–631 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 4–631. 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 Seventh Amendment to the Plan that are filed with the Commission, and all written communications relating to the Seventh Amendment to the Plan 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Participants' principal offices. 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 4–631 and should be submitted on or before April 1, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

EXHIBIT A

Proposed new language is *italicized;* proposed deletions are in [brackets].

PLAN TO ADDRESS EXTRAORDINARY MARKET VOLATILITY SUBMITTED TO THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 608 OF REGULATION NMS UNDER THE SECURITIES EXCHANGE ACT OF 1934

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Preamble

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

I. Definitions

(A) "Eligible Reported Transactions" shall have the meaning prescribed by the Operating Committee and shall generally mean transactions that are eligible to update the last sale price of an NMS Stock.

(B) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(C) "Limit State" shall have the meaning provided in Section VI of the Plan.

(D) "Limit State Quotation" shall have the meaning provided in Section VI of the Plan.

(E) "Lower Price Band" shall have the meaning provided in Section V of the Plan.

(F) "Market Data Plans" shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) "National Best Bid" and "National Best Offer" shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) "NMS Stock" shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) "Opening Price" shall mean the price of a transaction that opens trading on the Primary Listing Exchange, or, if the Primary Listing Exchange opens with quotations, the midpoint of those quotations.

(J) "Operating Committee" shall have the meaning provided in Section III(C) of the Plan.

(K) "Participant" means a party to the Plan.

(L) "Plan" means the plan set forth in this instrument, as amended from time

to time in accordance with its provisions.

(M) "Percentage Parameter" shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) "Price Bands" shall have the meaning provided in Section V of the Plan.

(O) "Primary Listing Exchange" shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) "Processor" shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Q) "Pro-Forma Reference Price" shall have the meaning provided in Section V(A)(2) of the Plan.

(R) "Regular Trading Hours" shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(S) "Regulatory Halt" shall have the meaning specified in the Market Data Plans.

(T) "Reference Price" shall have the meaning provided in Section V of the Plan.

(U) "Reopening Price" shall mean the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) "SEC" shall mean the United States Securities and Exchange Commission.

(W) "Straddle State" shall have the meaning provided in Section VII(A)(2) of the Plan.

(X) "Trading center" shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(Y) "Trading Pause" shall have the meaning provided in Section VII of the Plan.

(Z) "Upper Price Band" shall have the meaning provided in Section V of the Plan.

II. Parties

(A) *List of Parties*

The parties to the Plan are as follows:

(1) BATS Exchange, Inc.
8050 Marshall Drive
Lenexa, Kansas 66214
(2) BATS Y-Exchange, Inc.
8050 Marshall Drive
Lenexa, Kansas 66214
(3) Chicago Board Options Exchange, Incorporated
400 South LaSalle Street
Chicago, Illinois 60605
(4) Chicago Stock Exchange, Inc.
440 South LaSalle Street
Chicago, Illinois 60605
(5) EDGA Exchange, Inc.
545 Washington Boulevard
Sixth Floor
Jersey City, NJ 07310
(6) EDGX Exchange, Inc.
545 Washington Boulevard
Sixth Floor
Jersey City, NJ 07310
(7) Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006
(8) NASDAQ OMX BX, Inc.
One Liberty Plaza
New York, New York 10006
(9) NASDAQ OMX PHLX LLC
1900 Market Street
Philadelphia, Pennsylvania 19103
(10) The Nasdaq Stock Market LLC
1 Liberty Plaza
165 Broadway
New York, NY 10006
(11) National Stock Exchange, Inc.
101 Hudson, Suite 1200
Jersey City, NJ 07302
(12) New York Stock Exchange LLC
11 Wall Street
New York, New York 10005
(13) NYSE MKT LLC
20 Broad Street
New York, New York 10005
(14) NYSE Arca, Inc.
100 South Wacker Drive
Suite 1800
Chicago, IL 60606

(B) *Compliance Undertaking*

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

(C) *New Participants*

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

(D) *Advisory Committee*

(1) *Formation.* Notwithstanding other provisions of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(2) *Composition.* Members of the Advisory Committee shall be selected for two-year terms as follows:

(A) *Advisory Committee Selections.* By affirmative vote of a majority of the Participants, the Participants shall select at least one representatives from each of the following categories to be members of the Advisory Committee: (1) a broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an alternative trading system; (4) a broker-dealer that primarily engages in trading for its own account; and (5) an investor.

(3) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, proposed material amendments to the Plan.

(4) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend meetings of the Operating Committee and to receive any information concerning Plan matters; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants, the Operating Committee determines that an item of Plan business requires confidential treatment.

III. Amendments to Plan

(A) *General Amendments*

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) *New Participants*

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) *Operating Committee*

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. *Trading Center Policies and Procedures*

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

V. *Price Bands*

(A) *Calculation and Dissemination of Price Bands*

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated during Regular Trading Hours. Between 9:30 a.m. and 9:45 a.m. ET, and 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A. If a Reopening Price does not occur within ten minutes after the beginning of a Trading Pause, the Price Band, for the first 30 seconds following the reopening after that Trading Pause, shall be calculated by applying triple the Percentage Parameters set forth in Appendix A.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

(B) *Openings*

(1) Except when a Regulatory Halt is in effect at the start of Regular Trading Hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(C) *Reopenings*

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange if such Reopening Price occurs within ten minutes after the beginning of the Trading Pause, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Reopening Price does not occur within ten minutes after the beginning of the Trading Pause, the first Reference Price following the Trading Pause shall be equal to the last effective Reference Price before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the

Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

VI. *Limit Up-Limit Down Requirements*

(A) *Limitations on Trades and Quotations Outside of Price Bands*

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both (i) does not update the last sale price (except if solely because the transaction was reported late or because the transaction was an odd-lot sized transaction), and (ii) is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Price Band or a National Best Offer is above the Upper Price Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Price Band or a National Best Bid is equal to the Upper Price Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a "Limit State Quotation".

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided, however, that any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

(B) *Entering and Exiting a Limit State*

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (*i.e.*, a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan or at the end of Regular Trading Hours.

VII. *Trading Pauses*

(A) *Declaration of Trading Pauses*

(1) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor.

(2) The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State, which is when National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility. The Primary Listing Exchange shall develop policies and procedures for determining when it would declare a Trading Pause in such circumstances. If a Trading Pause is declared for an NMS Stock under this provision, the Primary Listing Exchange shall notify the Processor.

(3) The Processor shall disseminate Trading Pause information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

(B) *Reopening of Trading During Regular Trading Hours*

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock for any reason other than a significant order imbalance and if it has not declared a Regulatory Halt. The Processor shall disseminate this information to the public, and all trading centers may begin trading the NMS Stock at this time.

(3) If the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause in an NMS Stock, and has not declared a Regulatory Halt, all trading centers may begin trading the NMS Stock.

(4) When trading begins after a Trading Pause, the Processor shall update the Price Bands as set forth in Section V(C)(1) of the Plan.

(C) *Trading Pauses Within Ten Minutes of the End of Regular Trading Hours*

(1) If a Trading Pause for an NMS Stock is declared in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen trading and shall attempt to execute a closing transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

VIII. *Implementation*

The initial date of Plan operations shall be April 8, 2013.

(A) *Phase I*

(1) On the initial date of Plan operations, Phase I of Plan implementation shall begin in select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan.

(2) Three months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply to all Tier 1 NMS Stocks identified in Appendix A of the Plan.

(3) During Phase I, the first Price Bands for a trading day shall be calculated and disseminated 15 minutes after the start of Regular Trading Hours as specified in Section (V)(A) of the Plan. No Price Bands shall be calculated and disseminated and therefore trading shall not enter a Limit State less than 30 minutes before the end of Regular Trading Hours.

(B) *Phase II—Full Implementation*

Phase II.A.: Eight months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 3:45 p.m. ET each trading day, or earlier in the case of an early scheduled close.

Phase II.B.: By February 24, 2014, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close.

(C) Pilot

The Plan shall be implemented on a [one-year] pilot basis set to end on February 20, 2015.

IX. *Withdrawal from Plan*

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

X. *Counterparts and Signatures*

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the __day of February 2014 by each of the parties hereto.

BATS EXCHANGE, INC.

BY: _____

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

BY: _____

EDGA EXCHANGE, INC.

BY: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

BY: _____

NASDAQ OMX PHLX LLC

BY: _____

NATIONAL STOCK EXCHANGE, INC.

BY: _____

NYSE MKT LLC

BY: _____

BATS Y-EXCHANGE, INC.

BY: _____

CHICAGO STOCK EXCHANGE, INC.

BY: _____

EDGX EXCHANGE, INC.

BY: _____

NASDAQ OMX BX, INC.

BY: _____

THE NASDAQ STOCK MARKET LLC

BY: _____

NEW YORK STOCK EXCHANGE LLC

BY: _____

NYSE ARCA, INC.

BY: _____

Appendix A—Percentage Parameters

I. *Tier 1 NMS Stocks*

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index, the Russell 1000 Index, and the exchange-traded products ("ETP") listed on Schedule 1 to this Appendix. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume ("CADV"). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over $2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective Web sites.

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price more than $3.00 shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

II. *Tier 2 NMS Stocks*

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1, provided, however, that all rights and warrants are excluded from the Plan.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price more than $3.00 shall be *10*%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

(6) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

Appendix A—Schedule 1

Ticker	Name	Primary exchange
AAXJ	iShares MSCI All Country Asia ex Japan ETF	NASDAQ GM
ACWI	iShares MSCI ACWI ETF	NASDAQ GM
ACWV	iShares MSCI All Country World Minimum Volatility ETF	NYSE Arca
ACWX	iShares MSCI ACWI ex US ETF	NASDAQ GM
AGG	iShares Core Total US Bond Market ETF	NYSE Arca
AGZ	iShares Agency Bond ETF	NYSE Arca
ALD	WisdomTree Asia Local Debt Fund	NYSE Arca
AMJ	JPMorgan Alerian MLP Index ETN	NYSE Arca
AMLP	Alerian MLP ETF	NYSE Arca
ASHR	db X-trackers Harvest CSI 300 China A-Shares Fund	NYSE Arca
BAB	PowerShares Build America Bond Portfolio	NYSE Arca
BBH	Market Vectors Biotech ETF	NYSE Arca
BIL	SPDR Barclays 1–3 Month T-Bill	NYSE Arca
BIV	Vanguard Intermediate-Term Bond ETF	NYSE Arca
BKF	iShares MSCI BRIC ETF	NYSE Arca
BKLN	PowerShares Senior Loan Portfolio	NYSE Arca
BLV	Vanguard Long-Term Bond ETF	NYSE Arca
BND	Vanguard Total Bond Market ETF	NYSE Arca
BNDX	Vanguard Total International Bond ETF	NASDAQ GM
BNO	United States Brent Oil Fund LP	NYSE Arca
BOND	Pimco Total Return ETF	NYSE Arca
BRF	Market Vectors Brazil Small-Cap ETF	NYSE Arca
BSCE	Guggenheim BulletShares 2014 Corporate Bond ETF	NYSE Arca
BSCF	Guggenheim BulletShares 2015 Corporate Bond ETF	NYSE Arca
BSCG	Guggenheim BulletShares 2016 Corporate Bond ETF	NYSE Arca
BSCH	Guggenheim BulletShares 2017 Corporate Bond ETF	NYSE Arca
BSJE	Guggenheim BulletShares 2014 High Yield Corporate Bond ETF	NYSE Arca
BSJF	Guggenheim BulletShares 2015 High Yield Corporate Bond ETF	NYSE Arca
BSJG	Guggenheim BulletShares 2016 High Yield Corporate Bond ETF	NYSE Arca
BSV	Vanguard Short-Term Bond ETF	NYSE Arca
BWX	SPDR Barclays International Treasury Bond ETF	NYSE Arca
BZF	WisdomTree Brazilian Real Fund	NYSE Arca
CFT	iShares Credit Bond ETF	NYSE Arca
CIU	iShares Intermediate Credit Bond ETF	NYSE Arca
CLY	iShares 10+ Year Credit Bond ETF	NYSE Arca
CORN	Teucrium Corn Fund	NYSE Arca
CSD	Guggenheim Spin-Off ETF	NYSE Arca
CSJ	iShares 1–3 Year Credit Bond ETF	NYSE Arca
CVY	Guggenheim Multi-Asset Income ETF	NYSE Arca
CWB	SPDR Barclays Convertible Securities ETF	NYSE Arca
DBA	PowerShares DB Agriculture Fund	NYSE Arca
DBB	PowerShares DB Base Metals Fund	NYSE Arca
DBC	PowerShares DB Commodity Index Tracking Fund	NYSE Arca
DBJP	db X-trackers MSCI Japan Hedged Equity Fund	NYSE Arca
DBO	PowerShares DB Oil Fund	NYSE Arca
DBP	PowerShares DB Precious Metals Fund	NYSE Arca
DBV	PowerShares DB G10 Currency Harvest Fund	NYSE Arca
DEM	WisdomTree Emerging Markets Equity Income Fund	NYSE Arca
DES	WisdomTree SmallCap Dividend Fund	NYSE Arca
DFE	WisdomTree Europe SmallCap Dividend Fund	NYSE Arca
DGS	WisdomTree Emerging Markets SmallCap Dividend Fund	NYSE Arca
DGZ	PowerShares DB Gold Short ETN	NYSE Arca
DHS	WisdomTree Equity Income Fund	NYSE Arca
DIA	SPDR Dow Jones Industrial Average ETF Trust	NYSE Arca
DJP	iPath Dow Jones—UBS Commodity Index Total Return ETN	NYSE Arca
DLN	WisdomTree LargeCap Dividend Fund	NYSE Arca
DLS	WisdomTree International SmallCap Dividend Fund	NYSE Arca
DOG	ProShares Short Dow30	NYSE Arca
DON	WisdomTree MidCap Dividend Fund	NYSE Arca
DTN	WisdomTree Dividend Ex-Financials Fund	NYSE Arca
DTYS	iPath US Treasury 10-year Bear ETN	NYSE Arca
DVY	iShares Select Dividend ETF	NYSE Arca
DWAS	PowerShares DWA SmallCap Momentum Portfolio	NYSE Arca
DWX	SPDR S&P International Dividend ETF	NYSE Arca
DXJ	WisdomTree Japan Hedged Equity Fund	NYSE Arca
EBND	SPDR Barclays Emerging Markets Local Bond ETF	NYSE Arca
ECH	iShares MSCI Chile Capped ETF	NYSE Arca
ECON	EGShares Emerging Markets Consumer ETF	NYSE Arca

Ticker	Name	Primary exchange
EDIV	SPDR S&P Emerging Markets Dividend ETF	NYSE Arca
EDV	Vanguard Extended Duration Treasury ETF	NYSE Arca
EEB	Guggenheim BRIC ETF	NYSE Arca
EEM	iShares MSCI Emerging Markets ETF	NYSE Arca
EEMV	iShares MSCI Emerging Markets Minimum Volatility ETF	NYSE Arca
EES	WisdomTree SmallCap Earnings Fund	NYSE Arca
EFA	iShares MSCI EAFE ETF	NYSE Arca
EFAV	iShares MSCI EAFE Minimum Volatility ETF	NYSE Arca
EFG	iShares MSCI EAFE Growth ETF	NYSE Arca
EFV	iShares MSCI EAFE Value ETF	NYSE Arca
EFZ	ProShares Short MSCI EAFE	NYSE Arca
EIDO	iShares MSCI Indonesia ETF	NYSE Arca
ELD	WisdomTree Emerging Markets Local Debt Fund	NYSE Arca
EMB	iShares JP Morgan USD Emerging Markets Bond ETF	NYSE Arca
EMLC	Market Vectors Emerging Markets Local Currency Bond ETF	NYSE Arca
EMLP	First Trust North American Energy Infrastructure Fund	NYSE Arca
EPHE	iShares MSCI Philippines ETF	NYSE Arca
EPI	WisdomTree India Earnings Fund	NYSE Arca
EPOL	iShares MSCI Poland Capped ETF	NYSE Arca
EPP	iShares MSCI Pacific ex Japan ETF	NYSE Arca
EPU	iShares MSCI All Peru Capped ETF	NYSE Arca
ERUS	iShares MSCI Russia Capped ETF	NYSE Arca
EUFN	iShares MSCI Europe Financials ETF	NASDAQ GM
EUM	ProShares Short MSCI Emerging Markets	NYSE Arca
EWA	iShares MSCI Australia ETF	NYSE Arca
EWC	iShares MSCI Canada ETF	NYSE Arca
EWD	iShares MSCI Sweden ETF	NYSE Arca
EWG	iShares MSCI Germany ETF	NYSE Arca
EWH	iShares MSCI Hong Kong ETF	NYSE Arca
EWI	iShares MSCI Italy Capped ETF	NYSE Arca
EWJ	iShares MSCI Japan ETF	NYSE Arca
EWL	iShares MSCI Switzerland Capped ETF	NYSE Arca
EWM	iShares MSCI Malaysia ETF	NYSE Arca
EWN	iShares MSCI Netherlands ETF	NYSE Arca
EWP	iShares MSCI Spain Capped ETF	NYSE Arca
EWQ	iShares MSCI France ETF	NYSE Arca
EWS	iShares MSCI Singapore ETF	NYSE Arca
EWT	iShares MSCI Taiwan ETF	NYSE Arca
EWU	iShares MSCI United Kingdom ETF	NYSE Arca
EWW	iShares MSCI Mexico Capped ETF	NYSE Arca
EWX	SPDR S&P Emerging Markets SmallCap ETF	NYSE Arca
EWY	iShares MSCI South Korea Capped ETF	NYSE Arca
EWZ	iShares MSCI Brazil Capped ETF	NYSE Arca
EXI	iShares Global Industrials ETF	NYSE Arca
EZA	iShares MSCI South Africa ETF	NYSE Arca
EZM	WisdomTree MidCap Earnings Fund	NYSE Arca
EZU	iShares MSCI EMU ETF	NYSE Arca
FBT	First Trust NYSE Arca Biotechnology Index Fund	NYSE Arca
FCG	First Trust ISE-Revere Natural Gas Index Fund	NYSE Arca
FDL	First Trust Morningstar Dividend Leaders Index	NYSE Arca
FDN	First Trust Dow Jones Internet Index Fund	NYSE Arca
FEM	First Trust Emerging Markets AlphaDEX Fund	NYSE Arca
FEP	First Trust Europe AlphaDEX Fund	NYSE Arca
FEX	First Trust Large Cap Core AlphaDEX Fund	NYSE Arca
FEZ	SPDR EURO STOXX 50 ETF	NYSE Arca
FGD	First Trust DJ Global Select Dividend Index Fund	NYSE Arca
FLOT	iShares Floating Rate Bond ETF	NYSE Arca
FLRN	SPDR Barclays Investment Grade Floating Rate ETF	NYSE Arca
FM	iShares MSCI Frontier 100 ETF	NYSE Arca
FNX	First Trust Mid Cap Core AlphaDEX Fund	NYSE Arca
FPX	First Trust US IPO Index Fund	NYSE Arca
FRI	First Trust S&P REIT Index Fund	NYSE Arca
FTA	First Trust Large Cap Value AlphaDEX Fund	NYSE Arca
FVD	First Trust Value Line Dividend Index Fund	NYSE Arca
FXA	CurrencyShares Australian Dollar Trust	NYSE Arca
FXB	CurrencyShares British Pound Sterling Trust	NYSE Arca
FXC	CurrencyShares Canadian Dollar Trust	NYSE Arca
FXD	First Trust Consumer Discretionary AlphaDEX Fund	NYSE Arca
FXE	CurrencyShares Euro Trust	NYSE Arca
FXF	CurrencyShares Swiss Franc Trust	NYSE Arca
FXG	First Trust Consumer Staples AlphaDEX Fund	NYSE Arca
FXH	First Trust Health Care AlphaDEX Fund	NYSE Arca
FXI	iShares China Large-Cap ETF	NYSE Arca

Ticker	Name	Primary exchange
FXL	First Trust Technology AlphaDEX Fund	NYSE Arca
FXN	First Trust Energy AlphaDEX Fund	NYSE Arca
FXO	First Trust Financial AlphaDEX Fund	NYSE Arca
FXR	First Trust Industrials/Producer Durables AlphaDEX Fund	NYSE Arca
FXU	First Trust Utilities AlphaDEX Fund	NYSE Arca
FXY	CurrencyShares Japanese Yen Trust	NYSE Arca
FXZ	First Trust Materials AlphaDEX Fund	NYSE Arca
FYX	First Trust Small Cap Core AlphaDEX Fund	NYSE Arca
GCC	GreenHaven Continuous Commodity Index Fund	NYSE Arca
GDX	Market Vectors Gold Miners ETF	NYSE Arca
GDXJ	Market Vectors Junior Gold Miners ETF	NYSE Arca
GLD	SPDR Gold Shares	NYSE Arca
GLTR	ETFS Physical Precious Metal Basket Shares	NYSE Arca
GMF	SPDR S&P Emerging Asia Pacific ETF	NYSE Arca
GMM	SPDR S&P Emerging Markets ETF	NYSE Arca
GNR	SPDR S&P Global Natural Resources ETF	NYSE Arca
GSG	iShares S&P GSCI Commodity Indexed Trust	NYSE Arca
GSY	Guggenheim Enhanced Short Duration ETF	NYSE Arca
GUNR	FlexShares Global Upstream Natural Resources Index Fund	NYSE Arca
GURU	Global X Guru Index ETF	NYSE Arca
GVI	iShares Intermediate Government/Credit Bond ETF	NYSE Arca
GWL	SPDR S&P World ex-US ETF	NYSE Arca
GWX	SPDR S&P International Small Cap ETF	NYSE Arca
GXC	SPDR S&P China ETF	NYSE Arca
GXG	Global X FTSE Colombia 20 ETF	NYSE Arca
HAO	Guggenheim China Small Cap ETF	NYSE Arca
HDGE	Ranger Equity Bear ETF	NYSE Arca
HDV	iShares High Dividend ETF	NYSE Arca
HEDJ	WisdomTree Europe Hedged Equity Fund	NYSE Arca
HYD	Market Vectors High Yield Municipal Index ETF	NYSE Arca
HYEM	Market Vectors Emerging High Yield Bond ETF	NYSE Arca
HYG	iShares iBoxx $ High Yield Corporate Bond ETF	NYSE Arca
HYLD	Peritus High Yield ETF	NYSE Arca
HYMB	SPDR Nuveen S&P High Yield Municipal Bond ETF	NYSE Arca
HYS	PIMCO 0–5 Year High Yield Corporate Bond Index Exchange-Traded Fund	NYSE Arca
IAI	iShares U.S. Broker-Dealers ETF	NYSE Arca
IAT	iShares US Regional Banks ETF	NYSE Arca
IAU	iShares Gold Trust	NYSE Arca
IBB	iShares Nasdaq Biotechnology ETF	NASDAQ GM
IBND	SPDR Barclays International Corporate Bond ETF	NYSE Arca
ICF	iShares Cohen & Steers REIT ETF	NYSE Arca
IDU	iShares US Utilities ETF	NYSE Arca
IDV	iShares International Select Dividend ETF	NYSE Arca
IDX	Market Vectors Indonesia Index ETF	NYSE Arca
IEF	iShares 7–10 Year Treasury Bond ETF	NYSE Arca
IEFA	iShares Core MSCI EAFE ETF	NYSE Arca
IEI	iShares 3–7 Year Treasury Bond ETF	NYSE Arca
IEMG	iShares Core MSCI Emerging Markets ETF	NYSE Arca
IEO	iShares U.S. Oil & Gas Exploration & Production ETF	NYSE Arca
IEV	iShares Europe ETF	NYSE Arca
IEZ	iShares U.S. Oil Equipment & Services ETF	NYSE Arca
IFGL	iShares International Developed Real Estate ETF	NASDAQ GM
IGE	iShares North American Natural Resources ETF	NYSE Arca
IGF	iShares Global Infrastructure ETF	NYSE Arca
IGM	iShares North American Tech ETF	NYSE Arca
IGOV	iShares International Treasury Bond ETF	NASDAQ GM
IGV	iShares North American Tech-Software ETF	NYSE Arca
IHE	iShares US Pharmaceuticals ETF	NYSE Arca
IHF	iShares U.S. Healthcare Providers ETF	NYSE Arca
IHI	iShares U.S. Medical Devices ETF	NYSE Arca
IHY	Market Vectors International High Yield Bond ETF	NYSE Arca
IJH	iShares Core S&P Mid-Cap ETF	NYSE Arca
IJJ	iShares S&P Mid-Cap 400 Value ETF	NYSE Arca
IJK	iShares S&P Mid-Cap 400 Growth ETF	NYSE Arca
IJR	iShares Core S&P Small-Cap ETF	NYSE Arca
IJS	iShares S&P Small-Cap 600 Value ETF	NYSE Arca
IJT	iShares S&P Small-Cap 600 Growth ETF	NYSE Arca
ILF	iShares Latin America 40 ETF	NYSE Arca
INDA	iShares MSCI India ETF	BATS
INDY	iShares India 50 ETF	NASDAQ GM
INP	iPath MSCI India Index ETN	NYSE Arca
IOO	iShares Global 100 ETF	NYSE Arca
IPE	SPDR Barclays TIPS ETF	NYSE Arca

Ticker	Name	Primary exchange
ITA	iShares U.S. Aerospace & Defense ETF	NYSE Arca
ITB	iShares U.S. Home Construction ETF	NYSE Arca
ITM	Market Vectors Intermediate Municipal ETF	NYSE Arca
ITOT	iShares Core S&P Total US Stock Market ETF	NYSE Arca
ITR	SPDR Barclays Intermediate Term Corporate Bond ETF	NYSE Arca
IVE	iShares S&P 500 Value ETF	NYSE Arca
IVV	iShares Core S&P 500 ETF	NYSE Arca
IVW	iShares S&P 500 Growth ETF	NYSE Arca
IWB	iShares Russell 1000 ETF	NYSE Arca
IWC	iShares Micro-Cap ETF	NYSE Arca
IWD	iShares Russell 1000 Value ETF	NYSE Arca
IWF	iShares Russell 1000 Growth ETF	NYSE Arca
IWM	iShares Russell 2000 ETF	NYSE Arca
IWN	iShares Russell 2000 Value ETF	NYSE Arca
IWO	iShares Russell 2000 Growth ETF	NYSE Arca
IWP	iShares Russell Mid-Cap Growth ETF	NYSE Arca
IWR	iShares Russell Mid-Cap ETF	NYSE Arca
IWS	iShares Russell Mid-Cap Value ETF	NYSE Arca
IWV	iShares Russell 3000 ETF	NYSE Arca
IWW	iShares Russell 3000 Value ETF	NYSE Arca
IXC	iShares Global Energy ETF	NYSE Arca
IXG	iShares Global Financials ETF	NYSE Arca
IXJ	iShares Global Healthcare ETF	NYSE Arca
IXN	iShares Global Tech ETF	NYSE Arca
IXP	iShares Global Telecom ETF	NYSE Arca
IXUS	iShares Core MSCI Total International Stock ETF	NYSE Arca
IYC	iShares U.S. Consumer Services ETF	NYSE Arca
IYE	iShares U.S. Energy ETF	NYSE Arca
IYF	iShares US Financials ETF	NYSE Arca
IYG	iShares U.S. Financial Services ETF	NYSE Arca
IYH	iShares U.S. Healthcare ETF	NYSE Arca
IYJ	iShares U.S. Industrials ETF	NYSE Arca
IYM	iShares U.S. Basic Materials ETF	NYSE Arca
IYR	iShares US Real Estate ETF	NYSE Arca
IYT	iShares Transportation Average ETF	NYSE Arca
IYW	iShares US Technology ETF	NYSE Arca
IYY	iShares Dow Jones U.S. ETF	NYSE Arca
IYZ	iShares US Telecommunications ETF	NYSE Arca
JKE	iShares Morningstar Large-Cap Growth ETF	NYSE Arca
JKF	iShares Morningstar Large-Cap Value ETF	NYSE Arca
JNK	SPDR Barclays High Yield Bond ETF	NYSE Arca
JO	iPath Dow Jones-UBS Coffee Subindex Total Return ETN	NYSE Arca
KBE	SPDR S&P Bank ETF	NYSE Arca
KBWB	PowerShares KBW Bank Portfolio	NYSE Arca
KIE	SPDR S&P Insurance ETF	NYSE Arca
KOL	Market Vectors Coal ETF	NYSE Arca
KRE	SPDR S&P Regional Banking ETF	NYSE Arca
KXI	iShares Global Consumer Staples ETF	NYSE Arca
LAG	SPDR Barclays Aggregate Bond ETF	NYSE Arca
LEMB	iShares Emerging Markets Local Currency Bond ETF	NYSE Arca
LQD	iShares iBoxx $ Investment Grade Corporate Bond ETF	NYSE Arca
MBB	iShares MBS ETF	NYSE Arca
MCHI	iShares MSCI China ETF	NYSE Arca
MDIV	First Trust NASDAQ US Multi-Asset Diversified Income Index Fun	NASDAQ GM
MDY	SPDR S&P MidCap 400 ETF Trust	NYSE Arca
MGC	Vanguard Mega Cap ETF	NYSE Arca
MGK	Vanguard Mega Cap Growth ETF	NYSE Arca
MGV	Vanguard Mega Cap Value ETF	NYSE Arca
MINT	PIMCO Enhanced Short Maturity Exchange-Traded Fund	NYSE Arca
MLPI	ETRACS Alerian MLP Infrastructure Index ETN	NYSE Arca
MLPN	Credit Suisse MLP Equal Weight Index ETN	NYSE Arca
MOAT	Market Vectors Wide Moat ETF	NYSE Arca
MOO	Market Vectors Agribusiness ETF	NYSE Arca
MUB	iShares National AMT-Free Muni Bond ETF	NYSE Arca
MUNI	PIMCO Intermediate Municipal Bond Exchange-Traded Fund	NYSE Arca
MXI	iShares Global Materials ETF	NYSE Arca
NEAR	iShares Short Maturity Bond ETF	BATS
NKY	MAXIS Nikkei 225 Index Fund ETF	NYSE Arca
NOBL	ProShares S&P 500 Aristocrats ETF	NYSE Arca
OEF	iShares S&P 100 ETF	NYSE Arca
OIH	Market Vectors Oil Service ETF	NYSE Arca
OIL	iPath Goldman Sachs Crude Oil Total Return Index ETN	NYSE Arca
ONEQ	Fidelity NASDAQ Composite Index Tracking Stock ETF	NASDAQ GM

Ticker	Name	Primary exchange
PALL	ETFS Physical Palladium Shares	NYSE Arca
PBE	Powershares Dynamic Biotechnology & Genome Portfolio	NYSE Arca
PBS	Powershares Dynamic Media Portfolio	NYSE Arca
PBW	Powershares WilderHill Clean Energy Portfolio	NYSE Arca
PCEF	PowerShares CEF Income Composite Portfolio	NYSE Arca
PCY	PowerShares Emerging Markets Sovereign Debt Portfolio	NYSE Arca
PDP	PowerShares DWA Momentum Portfolio	NYSE Arca
PFF	iShares US Preferred Stock ETF	NYSE Arca
PGF	PowerShares Financial Preferred Portfolio	NYSE Arca
PGJ	Powershares Golden Dragon China Portfolio	NYSE Arca
PGX	PowerShares Preferred Portfolio	NYSE Arca
PHB	PowerShares Fundamental High Yield Corporate Bond Portfolio	NYSE Arca
PHO	PowerShares Water Resources Portfolio	NYSE Arca
PHYS	Sprott Physical Gold Trust	NYSE Arca
PID	PowerShares International Dividend Achievers Portfolio	NYSE Arca
PIE	PowerShares DWA Emerging Markets Momentum Portfolio	NYSE Arca
PIN	PowerShares India Portfolio	NYSE Arca
PIZ	PowerShares DWA Developed Markets Momentum Portfolio	NYSE Arca
PJP	Powershares Dynamic Pharmaceuticals Portfolio	NYSE Arca
PKW	PowerShares Buyback Achievers Portfolio	NYSE Arca
PNQI	PowerShares NASDAQ Internet Portfolio	NASDAQ GM
PPH	Market Vectors Pharmaceutical ETF	NYSE Arca
PPLT	ETFS Platinum Trust	NYSE Arca
PRF	Powershares FTSE RAFI US 1000 Portfolio	NYSE Arca
PRFZ	PowerShares FTSE RAFI US 1500 Small-Mid Portfolio	NASDAQ GM
PSK	SPDR Wells Fargo Preferred Stock ETF	NYSE Arca
PSLV	Sprott Physical Silver Trust	NYSE Arca
PSP	PowerShares Global Listed Private Equity Portfolio	NYSE Arca
PSQ	ProShares Short QQQ	NYSE Arca
PWV	PowerShares Dynamic Large Cap Value Portfolio	NYSE Arca
PXF	PowerShares FTSE RAFI Developed Markets ex-U.S. Portfolio	NYSE Arca
PZA	PowerShares Insured National Municipal Bond Portfolio	NYSE Arca
QAI	IndexIQ ETF Trust—IQ Hedge Multi-Strategy Tracker ETF	NYSE Arca
QQEW	First Trust NASDAQ-100 Equal Weighted Index Fund	NASDAQ GM
QQQ	Powershares QQQ Trust Series 1	NASDAQ GM
REM	iShares Mortgage Real Estate Capped ETF	NYSE Arca
REZ	iShares Residential Real Estate Capped ETF	NYSE Arca
RFG	Guggenheim S&P Midcap 400 Pure Growth ETF	NYSE Arca
RIGS	Riverfront Strategic Income Fund	NYSE Arca
RJI	ELEMENTS Linked to the Rogers International Commodity Index—Total Return	NYSE Arca
RPG	Guggenheim S&P 500 Pure Growth ETF	NYSE Arca
RPV	Guggenheim S&P 500 Pure Value ETF	NYSE Arca
RSP	Guggenheim S&P 500 Equal Weight ETF	NYSE Arca
RSX	Market Vectors Russia ETF	NYSE Arca
RTH	Market Vectors Retail ETF	NYSE Arca
RWM	ProShares Short Russell2000	NYSE Arca
RWO	SPDR Dow Jones Global Real Estate ETF	NYSE Arca
RWR	SPDR Dow Jones REIT ETF	NYSE Arca
RWX	SPDR Dow Jones International Real Estate ETF	NYSE Arca
RXI	iShares Global Consumer Discretionary ETF	NYSE Arca
RYH	Guggenheim S&P 500 Equal Weight Healthcare ETF	NYSE Arca
RYT	Guggenheim S&P 500 Equal Weight Technology ETF	NYSE Arca
SCHA	Schwab US Small-Cap ETF	NYSE Arca
SCHB	Schwab US Broad Market ETF	NYSE Arca
SCHD	Schwab US Dividend Equity ETF	NYSE Arca
SCHE	Schwab Emerging Markets Equity ETF	NYSE Arca
SCHF	Schwab International Equity ETF	NYSE Arca
SCHG	Schwab U.S. Large-Cap Growth ETF	NYSE Arca
SCHH	Schwab U.S. REIT ETF	NYSE Arca
SCHM	Schwab U.S. Mid-Cap ETF	NYSE Arca
SCHO	Schwab Short-Term U.S. Treasury ETF	NYSE Arca
SCHP	Schwab U.S. TIPs ETF	NYSE Arca
SCHR	Schwab Intermediate-Term U.S. Treasury ETF	NYSE Arca
SCHV	Schwab U.S. Large-Cap Value ETF	NYSE Arca
SCHX	Schwab US Large-Cap ETF	NYSE Arca
SCHZ	Schwab U.S. Aggregate Bond ETF	NYSE Arca
SCIF	Market Vectors India Small-Cap Index ETF	NYSE Arca
SCPB	SPDR Barclays Short Term Corporate Bond ETF	NYSE Arca
SCZ	iShares MSCI EAFE Small-Cap ETF	NYSE Arca
SDIV	Global X SuperDividend ETF	NYSE Arca
SDOG	ALPS Sector Dividend Dogs ETF	NYSE Arca
SDY	SPDR S&P Dividend ETF	NYSE Arca
SGOL	ETFS Gold Trust	NYSE Arca

Ticker	Name	Primary exchange
SH	ProShares Short S&P500	NYSE Arca
SHM	SPDR Nuveen Barclays Short Term Municipal Bond ETF	NYSE Arca
SHV	iShares Short Treasury Bond ETF	NYSE Arca
SHY	iShares 1–3 Year Treasury Bond ETF	NYSE Arca
SIL	Global X Silver Miners ETF	NYSE Arca
SIVR	ETFS Physical Silver Shares	NYSE Arca
SJNK	SPDR Barclays Short Term High Yield Bond ETF	NYSE Arca
SLV	iShares Silver Trust	NYSE Arca
SLX	Market Vectors Steel Index Fund	NYSE Arca
SLY	SPDR S&P 600 Small CapETF	NYSE Arca
SMH	Market Vectors Semiconductor ETF	NYSE Arca
SOCL	Global X Social Media Index ETF	NASDAQ GM
SOXX	iShares PHLX Semiconductor ETF	NASDAQ GM
SPHB	PowerShares S&P 500 High Beta Port ETF	NYSE Arca
SPLV	PowerShares S&P 500 Low Volatility Portfolio	NYSE Arca
SPY	SPDR S&P 500 ETF Trust	NYSE Arca
SRLN	SPDR Blackstone/GSO Senior Loan ETF	NYSE Arca
STIP	iShares 0–5 Year TIPS Bond ETF	NYSE Arca
STPZ	PIMCO 1–5 Year U.S. TIPS Index Exchange-Traded Fund	NYSE Arca
SUB	iShares Short-Term National AMT-Free Muni Bond ETF	NYSE Arca
SVXY	ProShares Short VIX Short-Term Futures ETF	NYSE Arca
TAN	Guggenheim Solar ETF	NYSE Arca
TBF	ProShares Short 20+ Year Treasury	NYSE Arca
TDTF	FlexShares iBoxx 5-Year Target Duration TIPS Index Fund	NYSE Arca
TDTT	FlexShares iBoxx 3-Year Target Duration TIPS Index Fund	NYSE Arca
TFI	SPDR Nuveen Barclays Municipal Bond ETF	NYSE Arca
THD	iShares MSCI Thailand Capped ETF	NYSE Arca
TIP	iShares TIPS Bond ETF	NYSE Arca
TLH	iShares 10–20 Year Treasury Bond ETF	NYSE Arca
TLT	iShares 20+ Year Treasury Bond ETF	NYSE Arca
TLTD	FlexShares Morningstar Developed Markets ex-US Factor Tilt Index Fund	NYSE Arca
TOK	iShares MSCI Kokusai ETF	NYSE Arca
TUR	iShares MSCI Turkey ETF	NYSE Arca
UNG	United States Natural Gas Fund LP	NYSE Arca
USCI	United States Commodity Index Fund	NYSE Arca
USDU	WisdomTree Bloomberg U.S. Dollar Bullish Fund	NYSE Arca
USMV	iShares MSCI USA Minimum Volatility ETF	NYSE Arca
USO	United States Oil Fund LP	NYSE Arca
UUP	PowerShares DB US Dollar Index Bullish Fund	NYSE Arca
VAW	Vanguard Materials ETF	NYSE Arca
VB	Vanguard Small-Cap ETF	NYSE Arca
VBK	Vanguard Small-Cap Growth ETF	NYSE Arca
VBR	Vanguard Small-Cap Value ETF	NYSE Arca
VCIT	Vanguard Intermediate-Term Corporate Bond ETF	NASDAQ GM
VCLT	Vanguard Long-Term Corporate Bond ETF	NASDAQ GM
VCR	Vanguard Consumer Discretionary ETF	NYSE Arca
VCSH	Vanguard Short-Term Corporate Bond ETF	NASDAQ GM
VDC	Vanguard Consumer Staples ETF	NYSE Arca
VDE	Vanguard Energy ETF	NYSE Arca
VEA	Vanguard FTSE Developed Markets ETF	NYSE Arca
VEU	Vanguard FTSE All-World ex-US ETF	NYSE Arca
VFH	Vanguard Financials ETF	NYSE Arca
VGK	Vanguard FTSE Europe ETF	NYSE Arca
VGSH	Vanguard Short-Term Government Bond ETF	NASDAQ GM
VGT	Vanguard Information Technology ETF	NYSE Arca
VHT	Vanguard Health Care ETF	NYSE Arca
VIDI	Vident International Equity Fund	NASDAQ GM
VIG	Vanguard Dividend Appreciation ETF	NYSE Arca
VIIX	VelocityShares VIX Short Term ETN	NASDAQ GM
VIS	Vanguard Industrials ETF	NYSE Arca
VIXM	ProShares VIX Mid-Term Futures ETF	NYSE Arca
VIXY	ProShares VIX Short-Term Futures ETF	NYSE Arca
VMBS	Vanguard Mortgage-Backed Securities ETF	NASDAQ GM
VNM	Market Vectors Vietnam ETF	NYSE Arca
VNQ	Vanguard REIT ETF	NYSE Arca
VNQI	Vanguard Global ex-U.S. Real Estate ETF	NASDAQ GM
VO	Vanguard Mid-Cap ETF	NYSE Arca
VOE	Vanguard Mid-Cap Value ETF	NYSE Arca
VOO	Vanguard S&P 500 ETF	NYSE Arca
VOT	Vanguard Mid-Cap Growth ETF	NYSE Arca
VOX	Vanguard Telecommunication Services ETF	NYSE Arca
VPL	Vanguard FTSE Pacific ETF	NYSE Arca
VPU	Vanguard Utilities ETF	NYSE Arca

Ticker	Name	Primary exchange
VQT	Barclays ETN+ ETNs Linked to the S&P 500 Dynamic VEQTORTM TotaL Return Index	NYSE Arca
VSS	Vanguard FTSE All World ex-US Small-Cap ETF	NYSE Arca
VT	Vanguard Total World Stock ETF	NYSE Arca
VTI	Vanguard Total Stock Market ETF	NYSE Arca
VTIP	Vanguard Short-Term Inflation-Protected Securities ETF	NASDAQ GM
VTV	Vanguard Value ETF	NYSE Arca
VTWO	Vanguard Russell 2000	NASDAQ GM
VUG	Vanguard Growth ETF	NYSE Arca
VV	Vanguard Large-Cap ETF	NYSE Arca
VWO	Vanguard FTSE Emerging Markets ETF	NYSE Arca
VXF	Vanguard Extended Market ETF	NYSE Arca
VXUS	Vanguard Total International Stock ETF	NASDAQ GM
VXX	iPATH S&P 500 VIX Short-Term Futures ETN	NYSE Arca
VXZ	iPATH S&P 500 VIX Mid-Term Futures ETN	NYSE Arca
VYM	Vanguard High Dividend Yield ETF	NYSE Arca
WIP	SPDR DB International Government Inflation-Protected Bond ETF	NYSE Arca
XBI	SPDR S&P Biotech ETF	NYSE Arca
XES	SPDR S&P Oil & Gas Equipment & Services ETF	NYSE Arca
XHB	SPDR S&P Homebuilders ETF	NYSE Arca
XIV	VelocityShares Daily Inverse VIX Short Term ETN	NASDAQ GM
XLB	Materials Select Sector SPDR Fund	NYSE Arca
XLE	Energy Select Sector SPDR Fund	NYSE Arca
XLF	Financial Select Sector SPDR Fund	NYSE Arca
XLG	Guggenheim Russell Top 50 Mega Cap ETF	NYSE Arca
XLI	Industrial Select Sector SPDR Fund	NYSE Arca
XLK	Technology Select Sector SPDR Fund	NYSE Arca
XLP	Consumer Staples Select Sector SPDR Fund	NYSE Arca
XLU	Utilities Select Sector SPDR Fund	NYSE Arca
XLV	Health Care Select Sector SPDR Fund	NYSE Arca
XLY	Consumer Discretionary Select Sector SPDR Fund	NYSE Arca
XME	SPDR S&P Metals & Mining ETF	NYSE Arca
XOP	SPDR S&P Oil & Gas Exploration & Production ETF	NYSE Arca
XPH	SPDR S&P Pharmaceuticals ETF	NYSE Arca
XRT	SPDR S&P Retail ETF	NYSE Arca
XSD	SPDR S&P Semiconductor ETF	NYSE Arca
ZIV	VelocityShares Daily Inverse VIX Medium Term ETN	NASDAQ GM
ZROZ	PIMCO 25+ Year Zero Coupon U.S. Treasury Index Exchange-Traded Fund	NYSE Arca

Appendix B—Data

Unless otherwise specified, the following data shall be collected and transmitted to the SEC in an agreed-upon format on a monthly basis, to be provided 30 calendar days following month end. Unless otherwise specified, the Primary Listing Exchanges shall be responsible for collecting and transmitting the data to the SEC. Data collected in connection with Sections II(E)–(G) below shall be transmitted to the SEC with a request for confidential treatment under the Freedom of Information Act. 5 U.S.C. 552, and the SEC's rules and regulations thereunder.

I. *Summary Statistics*

A. Frequency with which NMS Stocks enter a Limit State. Such summary data shall be broken down as follows:

1. Partition stocks by category
   a. Tier 1 non-ETP issues > $3.00
   b. Tier 1 non-ETP issues >= $0.75 and <= $3.00
   c. Tier 1 non-ETP issues < $0.75
   d. Tier 1 non-leveraged ETPs in each of above categories
   e. Tier 1 leveraged ETPs in each of above categories
   f. Tier 2 non-ETPs in each of above categories
   g. Tier 2 non-leveraged ETPs in each of above categories
   h. Tier 2 leveraged ETPs in each of above categories
2. Partition by time of day
   a. Opening (prior to 9:45 a.m. ET)
   b. Regular (between 9:45 a.m. ET and 3:35 p.m. ET)
   c. Closing (after 3:35 p.m. ET)
   d. Within five minutes of a Trading Pause re-open or IPO open
3. Track reasons for entering a Limit State, such as:
   a. Liquidity gap—price reverts from a Limit State Quotation and returns to trading within the Price Bands
   b. Broken trades
   c. Primary Listing Exchange manually declares a Trading Pause pursuant to Section (VII)(2) of the Plan
   d. Other

B. Determine (1), (2) and (3) for when a Trading Pause has been declared for an NMS Stock pursuant to the Plan.

II. **Raw Data** *(all Participants, except A–E, which are for the Primary Listing Exchanges only)*

A. Record of every Straddle State.
   1. Ticker, date, time entered, time exited, flag for ending with Limit State, flag for ending with manual override.
   2. Pipe delimited with field names as first record.

B. Record of every Price Band
   1. Ticker, date, time at beginning of Price Band, Upper Price Band, Lower Price Band
   2. Pipe delimited with field names as first record

C. Record of every Limit State
   1. Ticker, date, time entered, time exited, flag for halt
   2. Pipe delimited with field names as first record

D. Record of every Trading Pause or halt
   1. Ticker, date, time entered, time exited, type of halt (i.e., regulatory halt, non-regulatory halt, Trading Pause pursuant to the Plan, other)
   2. Pipe delimited with field names as first record

E. Data set or orders entered into reopening auctions during halts or Trading Pauses
   1. Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side

2. Pipe delimited with field name as first record

F. Data set of order events received during Limit States

G. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.

1. Market/marketable sell orders arrivals and executions
a. Count
b. Shares
c. Shares executed
2. Market/marketable buy orders arrivals and executions
a. Count
b. Shares
c. Shares executed
3. Count arriving, volume arriving and shares executing in limit sell orders above NBBO mid-point
4. Count arriving, volume arriving and shares executing in limit sell orders at or below NBBO mid-point (non-marketable)
5. Count arriving, volume arriving and shares executing in limit buy orders at or above NBBO mid-point (non-marketable)
6. Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point
7. Count and volume arriving of limit sell orders priced at or above NBBO mid-point plus $0.05
8. Count and volume arriving of limit buy orders priced at or below NBBO mid-point minus $0.05
9. Count and volume of (3–8) for cancels
10. Include: ticker, date, time at start, time of Limit State, all data item fields in 1, last sale prior to 15-second period (null if no trades today), range during 15-second period, last trade during 15-second period

III. **[At least two months prior to the end of the Pilot Period,] *By September 30, 2014,* all Participants shall provide to the SEC assessments relating to the impact of the Plan and calibration of the Percentage Parameters as follows:**

A. Assess the statistical and economic impact on liquidity of approaching Price Bands.

B. Assess the statistical and economic impact of the Price Bands on erroneous trades.

C. Assess the statistical and economic impact of the appropriateness of the Percentage Parameters used for the Price Bands.

D. Assess whether the Limit State is the appropriate length to allow for liquidity replenishment when a Limit State is reached because of a temporary liquidity gap.

E. Evaluate concerns from the options markets regarding the statistical and economic impact of Limit States on liquidity and market quality in the options markets. (Participants that operate options exchange should also prepare such assessment reports.)

F. Assess whether the process for entering a Limit State should be adjusted and whether Straddle States are problematic.

G. Assess whether the process for exiting a Limit State should be adjusted.

H. Assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71655; File No. SR–NYSEMKT–2014–17]

Self-Regulatory Organizations; Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change Adopting Rule 971.1NY for an Electronic Price Improvement Auction for Single-Leg Orders

March 5, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 21, 2014, 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 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 adopt Rule 971.1NY for an electronic price improvement auction for single-leg orders. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 971.1NY that sets forth an electronic crossing mechanism with a price improvement auction on the Exchange to be referred to as the CUBE Auction, which stands for Customer Best Execution. Proposed Rule 971.1NY provides for a CUBE Auction for single-leg orders. The CUBE Auction may also be referred to herein simply as the Auction. The Exchange notes that the CUBE Auction, as proposed, would operate in a manner consistent with—but not identical to—the operation of electronic price improvement auctions available on other options markets.[4]

As proposed, the CUBE Auction would be available to ATP Holders both on and off the Trading Floor of the Exchange, subject to the requirements of Section 11(a) of the Act (discussed below). In addition to the CUBE Auction, Floor-based ATP Holders may continue to use existing Floor-based crossing rules.

CUBE Overview

As described below, the CUBE Auction is designed to work seamlessly with the Exchange's Consolidated Book, which is the Exchange's single electronic order book where all quotes

[4] *See* Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.74A—Automated Improvement Mechanism ("AIM"); NASDAQ OMX PHLX, INC. ("PHLX") Rule 1080—Price Improvement XL ("PIXL"); BOX Options Exchange LLC ("BOX") Rule 7150—Price Improvement Period ("PIP"); International Securities Exchange ("ISE") Rule 723—Price Improvement Mechanism ("PIM"). In general, the AIM, PIXL, PIP and PIM have features similar to those proposed in the Auction including: (a) Providing the opportunity for price improvement; (b) delineating an exposure period for original agency order; (c) setting guidelines for the types of orders eligible for participation; and (d) setting allocation rules for orders considered by the mechanism.

and limit orders sent to the Exchange are placed and reside as a file on the NYSE Amex System. Under proposed Rule 971.1NY(a), an ATP Holder may seek to guarantee the execution of a limit order it represents as agent on behalf of a public customer, broker dealer, or any other entity via the CUBE Auction. As proposed, this agency order would be referred to as the CUBE Order. The ATP Holder that submits the CUBE Order (the "Initiating Participant") would agree to guarantee the execution of the CUBE Order by submitting a contra-side order ("Contra Order") representing principal interest or interest it has solicited to trade with the CUBE Order at a specified price ("single stop price") or by utilizing auto-match or auto-match limit features as described in proposed Rule 971.1NY(c)(1). The Initiating Participant's manner of guaranteeing the CUBE Order and the price(s) at which the CUBE Order is stopped would not be displayed.

Although the Contra Order would guarantee the CUBE Order an execution, the purpose of the Auction is to provide the opportunity for price improvement for the CUBE Order as well as the opportunity for other market participants to interact with the CUBE Order. Accordingly, the Exchange will notify market participants when an Auction is occurring so that they may have an opportunity to participate. And as discussed in more detail below, if, during an Auction, the Exchange receives quotes or orders that are marketable, the Auction will conclude and those marketable orders or quotes would have an opportunity to interact with interest in the Auction and then will continue with regular order processing, without delay. So from the perspective of ATP Holders entering orders or quotes, the fact that an Auction may be occurring will not impact their order or quote processing, other than the possibility of additional trading opportunities by virtue of trading with interest that is designated for the Auction.

Criteria for Starting a CUBE Auction

As set forth in proposed Rule 971.1(a), an Auction begins with an "initiating price," which for a CUBE Order to buy (sell) shall be the lower (higher) of the CUBE Order's limit price or the National Best Offer ("NBO") (National Best Bid) ("NBB"), except as provided for in paragraph (b)(1)(B) of the proposed Rule (discussed below). For example, if both National Best Bid or Offer ("NBBO") or Exchange Best Bid or Offer ("BBO") are $2.00 × $2.05, and there is no Customer interest in the BBO, a CUBE Order to buy 60 contracts with a limit price of $2.06 would have an initiating price of $2.05 (the NBO).[5] However, if the limit price of the CUBE Order to buy were $2.04, the initiating price would be $2.04 (the CUBE Order to buy's limit price is lower than the NBO). The initiating price of the CUBE Order, as well as the Contra Order and any responsive GTX Orders (discussed below) may be priced in $0.01 increments, regardless of the Minimum Price Variation ("MPV") applicable to the series.[6] For example, in a series with a $0.05 MPV, if a CUBE Order to buy 10 contracts with a limit price of $2.05 is entered when both the NBBO and BBO throughout the Auction are $2.00 × $2.05, with no Customer interest in the BBO, the initiating price could be $2.04 if the Contra Order guarantees the execution of the CUBE Order with a single stop price at or below $2.04 or utilizes auto-match or auto-match limit (discussed below). At the conclusion of the CUBE Auction, the CUBE Order may execute at multiple prices within a permissible range but would always execute at the best-priced interest in the Auction.

Proposed Rule 971.1NY(b) sets forth the eligibility requirements for initiating a CUBE Auction. As proposed, the time at which the Auction is initiated would be considered the time of execution for the CUBE Order, and therefore even though the execution will print after the Auction has completed, the Exchange acknowledges that the Auction would qualify as an exception to the general prohibition against Trade-Throughs, pursuant to Rule 991NY(b)(9).[7] Similarly, because the Auction has a maximum duration of 750 milliseconds (as discussed below), the Auction also qualifies as an exception to Trade-Through Liability to the extent that the NBBO may improve during the Auction, pursuant to Rule 991NY(b)(5).[8] The Exchange notes that the proposed Auction is consistent with how the electronic price improvement auctions of other markets operate.[9]

As stated above, pursuant to proposed Rule 971.1NY(a), an Auction begins with an "initiating price," which for a CUBE Order to buy (sell) shall be the lower (higher) of the CUBE Order's limit price or the NBO (NBB), except as provided for in paragraph (b)(1)(B) of the proposed Rule (discussed below). And, at the conclusion of the CUBE Auction, the CUBE Order may execute at multiple prices within a permissible range.

To assure that a CUBE Auction does not result in a Trade-Through of the NBBO or execute ahead of Customer interest with priority that may be present in the Consolidated Book at the initiation of an Auction, the Exchange proposes that a CUBE Auction have a defined range of permissible executions that are based on a snapshot of the market at the initiation of the Auction. This range of permissible executions may change, however, if the BBO on the same side as the CUBE Order updates during the Auction, as provided in proposed paragraph (b)(1)(C) (discussed below).

As set forth in proposed Rule 971.1NY(b)(1), a CUBE Order to buy (sell) would generally have a proposed permissible range of executions with an upper (lower) bound equal to the initiating price and the lower (upper) bound equal to the NBB (NBO). However, pursuant to proposed paragraphs (b)(1)(A) and (b)(1)(B), the Exchange proposes tighter ranges of executions for when there is Customer interest in the BBO for orders of 50 contracts or more or for when there are orders for fewer than 50 contracts, which is consistent with how electronic price improvement auctions of other markets operate.[10]

First, pursuant to proposed Rule 971.1NY(b)(1)(A), if the CUBE Order to buy (sell) is for 50 contracts or more and there is Customer interest in the Consolidated Book at the Exchange Best Bid ("BB") (Exchange Best Offer ("BO")), the lower (upper) bound of

[5] *See* proposed Rule 971.1NY (b)(1). For purposes of this Rule, the term "Customer" shall have the definition set forth in Rule 900.2NY(18). As proposed in amended Rule 900.2NY(18A), for purposes of the proposed CUBE Auction, Professional Customers as defined in that Rule shall be treated as broker dealers. Treatment of Professional Customers as broker dealers for purposes of the CUBE Auction is consistent with the approved rules of the CBOE. *See* CBOE Rule 1.1(ggg). The Exchange notes that it also proposes to make a technical, non-substantive amendment to Rule 900.2NY(18A) to delete the cross reference to Rule 963.1NY, which was deleted when the Exchange revised various rules relating to Complex Order trading (*see* Securities Exchange Act Release No. 64558 (Dec. 16, 2010), 75 FR 80552 (Dec. 22, 2010).

[6] *See* proposed Rule 971.1NY(b)(7).

[7] *See* Rule 991NY(b)(9) (Order Protection, Exceptions to Trade-Through Liability) ("The transaction that constituted the Trade-Through was the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop").

[8] *See* Rule 991NY(b)(5) (Order Protection, Exceptions to Trade-Through Liability) ("The Eligible Exchange displaying the Protected Quotation that was traded through had displayed, within one second prior to execution of the Trade-Through, a Best bid or Best offer, as applicable, for the options series with a price that was equal or inferior to the price of the Trade-Through transaction").

[9] *See, e.g.*, CBOE Rule 6.74A; PHLX Rule 1080; BOX Rule 7150; ISE Rule 723.

[10] *See, e.g.*, CBOE Rule 6.74A(a)(3).

executions shall be the higher (lower) of the BB plus one cent (BO minus one cent) or the NBB (NBO).[11] The Exchange believes that this is appropriate to assure that any Customer interest at the BB (BO) retains priority at that price. Second, pursuant to proposed Rule 971.1NY(b)(1)(B), if the CUBE Order to buy (sell) is for fewer than 50 contracts, the initiating price shall be the lower (higher) of the CUBE Order's limit price, the NBO (NBB), or the BO minus one cent (BB plus one cent) and the lower (upper) bound of executions shall be the higher (lower) of the NBB (NBO) or the BB plus one cent (BO minus one cent).[12] Consistent with rules of other exchanges, and as discussed in further detail below, the Exchange proposes paragraph (b)(1)(B) of the proposed Rule be adopted on a pilot basis.[13]

The following examples show the initiating price and the permissible range of executions for various potential CUBE Orders, pursuant to proposed paragraphs (b)(1)(A) and (b)(1)(B) of Rule 971.1NY.

Examples of CUBE Orders Subject to Proposed Rule 971.1(NY)(b)(1)(A)

Example #1 (Customer interest on BB):

NBBO = $2.00 × $2.05
BBO= $2.00 × 2.05, Customer interest $2.00 bid
CUBE Order $2.05 bid for 60 contracts
Initiating Price is $2.05. Permissible range of execution: $2.01 to $2.05

Example #2 (Customer interest on BB):

NBBO = $2.00 × $2.05
BBO= $2.00 × 2.05, Customer interest $2.00 bid
CUBE Order $2.03 bid for 60 contracts
Initiating Price is $2.03. Permissible range of execution: $2.01 to $2.03

Examples of CUBE Orders Subject to Proposed Rule 971.1(NY)(b)(1)(B)

Example #3 (No Customer interest on BB):

NBBO = $2.00 × $2.05
BBO= $2.00 × 2.05
CUBE Order $2.05 bid for 10 contracts
Initiating Price is $2.04. Permissible range of execution: $2.01 to $2.04

Example #4 (No Customer interest on BB):

NBBO = $2.00 × $2.05
BBO= $1.95 × 2.10
CUBE Order $2.05 bid for 10 contracts
Initiating Price is $2.05. Permissible range of execution: $2.00 to $2.05

Pursuant to proposed Rule 971.1NY(b)(1)(C), if the BBO on the same side as the CUBE Order updates during the Auction, the range of permissible executions will adjust in accordance with the updated BBO, unless the Auction concludes early pursuant to paragraph (c)(4)(D) (as discussed below). The Exchange believes that this practice of honoring the updated BBO would help ensure a fair and orderly market by maintaining the priority of quotes and orders on the Consolidated Book as they update.

Example #4a (With No Customer interest on BBO):

NBBO = $1.00 × $1.20
BBO= $1.00 × $1.20
CUBE Order $1.10 bid for 100 contracts
Initiating Price is $1.10. Permissible range of execution: $1.00 to $1.10
BB updates during Auction to $1.04 (No Customer interest in BB); Updated permissible range of executions: $1.04–$1.10[14]

Example #4b (With Customer interest in the updated BBO):

NBBO = $1.00 × $1.20
BBO= $1.00 × $1.20
CUBE Order $1.10 bid for 100 contracts
Initiating Price is $1.10. Permissible range of execution: $1.00 to $1.10
BB updates during Auction to $1.04 (Customer interest in BB); Updated permissible range of executions: $1.05–$1.10 (BB plus one penny)

To mitigate the risk of advancing too far through the Consolidated Book during periods of increased volatility or reduced liquidity, the Exchange utilizes price protection mechanisms, including Trade Collar Protection, as defined in Rule 967NY(a).[15] A Marketable Order held at a Trading Collar represents interest that is eligible to trade at a specific price, even though that price is not displayed, and therefore must be taken into consideration when determining the range of permissible executions. Thus, if, at the time a CUBE Order is submitted, there are orders subject to Trade Collar Protection, *i.e.*, collared orders, the range of permissible executions for the CUBE Order will be narrowed to ensure the priority of the collared order(s). Specifically, pursuant to proposed Rule 971.1NY(b)(1)(D), if at the time the Auction is initiated, there is a Marketable Order to sell (buy) that has been displayed pursuant to Rule 967NY(a)(4)(A), the displayed price of the collared order minus (plus) one Trading Collar would be considered the BO (BB) when determining the range of permissible executions.[16] For example, if the NBBO and BBO at the beginning of an Auction for a CUBE Order to buy 60 contracts is $1.00 × $2.00, and the $2.00 BO is a marketable sell order (non-Customer) that has been displayed pursuant to Rule 967NY(a), the upper bound of the range of executions would be the price at which the Marketable Order would be eligible to trade, which in this example, would be $1.75. Accordingly, the permissible range of executions for this CUBE Order to buy would be $1.00 × $1.75. The inclusion of collared orders when determining the range of permissible executions will help ensure a fair and orderly market by maintaining the priority of orders and quotes on the Consolidated Book, while still affording the opportunity for price improvement on each Auction commenced on the Exchange.

Paragraphs (b)(2)–(9) of proposed Rule 971.1NY set forth the various reasons that a proposed CUBE Order would be rejected—and deemed ineligible to commence an Auction.

First, pursuant to proposed Rule 971.1NY(b)(2), a CUBE Order to buy (sell) with a limit price below (above) the lower (upper) bound of the permissible range of executions specified in paragraph (b)(1) of the proposed Rule would not be eligible to initiate an Auction and would be rejected along with the Contra Order. For example, if both the NBBO and the BBO were $2.00 × $2.05 and there is a proposed CUBE Order to buy for $1.99 for 60 contracts, this CUBE Order would be rejected because the limit price is below the lower bound of permissible executions, which here would have been $2.00. The Exchange believes that

[11] The Auction is similar to CBOE Rule 6.74A(a)(2) and ISE Rule 723(b)(1), to the extent that it has an upper bound of permissible executions, whereas the CBOE and ISE Rules cited have a lower bound.

[12] The Auction is consistent with CBOE 6.74A(a)(3), to the extent that it has an upper bound of permissible executions.

[13] *See, e.g.*, CBOE Rule 6.74A Interpretation and Policies .03; PHLX Rule 1080(n)(vii); ISE Rule 723 Supplementary Material .03; BOX IM–7150–1.

[14] The update to the BB in this example would not cause an early conclusion of the Auction because the updated BB does not improve the initiating price. *See, e.g.*, proposed Rule 971.1NY(c)(4)(D).

[15] *See* Rule 967NY(a)(1) ("The Exchange will not immediately execute (i) incoming Market Orders or marketable Limit Orders ('Marketable Orders') if the width of the NBBO is greater than one Trading Collar, as defined in paragraph (a)(2) below or, (ii) the balance of an incoming Marketable Order to buy (sell) that would execute at a price that exceeds the [NBO] ([NBB]) plus (minus) the value of one Trading Collar."). *See also* Rule 967NY(a)(4)(A) ("An incoming Marketable Order to buy (sell) will be displayed at a price equal to the NBB (NBO) plus (minus) one Trading Collar (the 'collared order')").

[16] *See* Rule 967NY(a)(2) ("A 'Trading Collar' shall be determined by the Exchange on a class-by-class basis and, unless announced otherwise via Trader Update, shall be the same value as the bid-ask differential guidelines established pursuant to Rule 925NY(b)(4). To preserve a fair and orderly market, the Exchange may, with the approval of two Trading Officials, grant intra-day relief to widen or narrow the Trading Collar for one or more option series").

it is appropriate to reject CUBE Orders to buy (sell) that are priced below (above) the lower (upper) bound because they are not the best-priced interest available and should not trade ahead of better-priced interest on the same side of the market.

Consistent with proposed Rule 971.1NY(b)(2), a CUBE Order to buy would be rejected if its limit price were below the lower bound of the permissible range of executions that has been calculated based on the presence of a marketable buy order subject to Rule 967NY(a). For example, if the NBBO and BBO at the beginning of an Auction for a CUBE Order to buy 60 contracts is $1.00 × $2.00, and the $1.00 BB represents a marketable buy order that has been displayed pursuant to Rule 967NY(a), a CUBE Order to buy with an initiating price of $1.15 will be rejected because it falls below the lower bound of permissible executions, which here would have been $1.25 (the BB plus one trading collar of $0.25).

Pursuant to proposed paragraph (b)(3), a CUBE Order, once accepted, will never execute outside the range of permissible executions and will never trade through its own limit price or the price of an unrelated quote or order. For example, if during the Auction, the NBB, but not BB, improved (to a price better than the CUBE Order to buy) and an unrelated order that was marketable against the updated NBB caused the Auction to conclude early, per proposed paragraph (c)(4) of this Rule (as discussed below), the CUBE Order would not trade through its own limit price to trade at the price of the updated NBB. Likewise, although the Auction would have concluded early, the incoming marketable sell order would not participate in the Auction and therefore would not trade through the updated NBB price. As discussed above, the CUBE Auction ignores updates to the NBBO during the Auction, per Rule 991NY(b)(5). Thus, as discussed below, the CUBE Order would trade with any interest received during the Auction, or if no interest was received during the Auction, with the Contra Order, at prices equal to or at prices that improved the CUBE Order's limit price.

The following are additional reasons that a proposed CUBE Order would be deemed ineligible to commence an Auction and therefore rejected, as set forth in proposed Rule 971.1NY(b)(4)–(6) and (b)(9).

1. CUBE Orders submitted before the opening of trading would not be eligible to initiate an Auction and would be rejected, along with the Contra Order. Because a CUBE Order is deemed executed at the time of entry, any CUBE Orders entered before the opening of trading would not be able to execute, and therefore the Exchange believes it would be appropriate to reject these CUBE Orders.

2. CUBE Orders submitted during the final second of the trading session in the affected series would not be eligible to initiate an Auction and would be rejected, along with the Contra Order. As discussed below, the length of the Auction would be at least 500 milliseconds and the Exchange believes it would be appropriate to reject CUBE Orders submitted during the final second of the trading session to assure that the processing of a CUBE Order may be complete

3. CUBE Orders for fewer than 50 contracts submitted when the BBO is $0.01 wide would likewise be rejected. For example, if both the NBBO and BBO were $2.00 × $2.01, and Customer interest may or may not be part of the BBO, a CUBE Order to buy 10 contracts for $2.01 would reject, because the market is only $0.01 wide. The Exchange believes it is appropriate to reject CUBE Orders in this scenario because these CUBE Orders would not be able to meet the permissible range of executions as specified in proposed Rule 971.1NY(b)(1).

4. CUBE Orders submitted when the NBBO is crossed would result in the CUBE Order being rejected. The Exchange believes that this is appropriate because the Exchange would not be able to determine a permissible range of executions if the NBBO is crossed.

The Exchange proposes that CUBE Orders may be entered in $.01 increments regardless of the MPV of the series involved.[17] To assure that the CUBE Order can receive price improvement, the Exchange also proposes that Contra Orders may be priced in one cent increments when specifying the stop price or the auto-match limit price pursuant to paragraphs (c)(1)(A) and (c)(1)(C) of the proposed Rule.[18] This practice is consistent with the rules of other exchanges operating electronic price improvement auctions.[19] In addition, the Exchange proposes that the minimum size requirement for a CUBE Order is one contract, which, as discussed below, would be adopted on a pilot basis.[20]

The Exchange believes that the above-described restrictions and requirements would ensure that the existing priority and display rules for the Consolidated Book[21] are preserved, while still providing ATP Holders an opportunity to guarantee either price improvement, more liquidity beyond the displayed size, or both, for orders they represent as agent.

CUBE Auction Process: Initiation of Auction

Proposed Rule 971.1NY(c) sets forth the Auction process. As described in more detail below, once initiated, a CUBE Auction is announced via a broadcast message, known as a Request For Response ("RFR"), and market participants indicate their interest in the Auction by submitting acceptable RFR Responses. To initiate a CUBE Auction, pursuant to proposed Rule 971.1NY(c)(1), the Initiating Participant can elect one of three ways in which it would guarantee the execution of a CUBE Order—a single stop price, "auto-match", or "auto-match limit", which is consistent with the rules of other options exchanges that offer electronic price improvement auctions.[22] The Exchange believes that these three options afford the Initiating Participant flexibility and control over the price(s) at which it would be willing to guarantee the execution of a CUBE Order.

First, pursuant to proposed Rule 971.1NY(c)(1)(A), the Initiating Participant can elect to specify a single stop price at which it would participate in the Auction. If elected, under this option, the Initiating Participant will only participate in the Auction at a single price, regardless of the prices of other responses to the Auction. For a CUBE Order to buy (sell), an Initiating Participant may specify a single stop price that is at or below (above) the initiating price of the Auction. A stop price specified for a CUBE Order to buy (sell) that is below (above) the lower (upper) bound of the range of permissible executions will be repriced to the lower (upper) bound (the best-priced interest). In this instance, the stop price is below the lower bound of permissible execution prices, and thus the execution can be priced back to within the permissible execution range. However, a stop price specified for a CUBE Order to buy (sell) that is above (below) the initiating price is not eligible to initiate an Auction because it would be priced higher—and therefore at a worse price—than pre-existing trading interest and both the CUBE Order and the Contra Order would be rejected. In this instance, the stop price

[17] *See* proposed Rule 971.1NY(b)(7).

[18] *Id.*

[19] *See, e.g.*, ISE Rule 723(b)(2).

[20] *See* proposed Rule 971.1NY(b)(8).

[21] *See* Rule 964NY.

[22] *See, e.g.*, CBOE Rule 6.74A(b)(1)(A).

is inferior to the pre-existing trading interest, and thus it would not result in an execution within the permissible range. The following example shows the impact of various single stop prices on a CUBE Order.

Example of Single Stop Price, per proposed Rule 971.1(NY)(c)(1)(A)

Example #5 (No Customer interest on BB):

NBBO = $2.00 × $2.05
BBO = $2.00 × $2.05
CUBE Order $2.06 bid for 60 contracts
Initiating Price is $2.05. Permissible Range of Executions is $2.00–$2.05
Stop price $2.06 and above = CUBE Order and Contra Order rejected (because exceeds the initiating price)
Stop Price $2.00 − $2.05 = CUBE Order and Contra Order accepted
Stop Price $1.99 and below = CUBE Order accepted, Contra Order repriced to $2.00

Rather than opt for a single stop price, an Initiating Participant may, pursuant to proposed Rule 971.1NY(c)(1)(B), elect the "auto-match" option, which would automatically match both the price and size of all RFR Responses. Accordingly, the Initiating Participant may receive executions at multiple prices. Where the auto-match option is selected for a CUBE Order to buy (sell), the Initiating Participant would automatically match as principal or as agent on behalf of a Contra Order the price and size of all RFR Responses that are lower (higher) than the initiating price and within the range of permissible executions. For example, if both the NBBO and the BBO were $2.00 × $2.05 and the CUBE Order is to buy for $2.06 for 60 contracts, with no Customer interest at the BBO, and the RFR Responses are to sell 10 contracts at $2.01, and 10 contacts at $2.02, then the Contra Order would auto-match these Responses by likewise selling 10 contracts to the CUBE Order at $2.01, and 10 contracts at $2.02. Thus, a total of 20 contracts would be sold to the CUBE Order at $2.01 and 20 contracts would be sold at $2.02. The remaining 20 contracts in the CUBE Order would trade against the Contra Order at $2.05 (the initiating price/the NBO), assuming no other RFR Responses were received. If, in the preceding example, the CUBE Order limit price was instead $2.03 (not $2.06), the initiating price would be $2.03 (lower than the NBO at $2.05) and the CUBE Order would execute against the Responses and the Contra Order in exactly the same manner (*i.e.*, a total of 20 contracts at $2.01 and 20 contracts at $2.02); however, the remaining 20 contracts would trade against the Contra Order at $2.03 limit price.

Finally, pursuant to proposed Rule 971.1NY(c)(1)(C), ATP Holders may guarantee the execution of a CUBE Order by electing the "auto-match limit" option, which would automatically match the price and size of all RFR Responses at each price to match the trading interest up or down to the limit price specified, referred to as the "auto-match limit price." Thus, for a CUBE Order to buy (sell), the Initiating Participant would automatically match, as principal or as agent on behalf of a Contra Order, the price and size of RFR Responses that are lower (higher) than the initiating price down (up) to the auto-match limit price. Assume, for example, that both the NBBO and the BBO were $2.00 × $2.05 and the CUBE Order is to buy for $2.06 for 60 contracts, with no Customer interest at the BBO, and the Contra Order selects an auto-match limit price of $2.03.[23] If the RFR Responses are to sell at or between $2.00 and $2.02, the CUBE Order would execute with those better-priced RFR Responses, but the Contra Order would not. Instead, the Contra Order would only match those RFR Responses, if any, priced $2.03 or higher.

Once a CUBE Order has been submitted for processing, the CUBE Order (as well as the Contra Order) may not be cancelled or modified.[24] This is consistent with the rules of other options exchanges that operate electronic price improvement auctions.[25] The Exchange believes that this requirement reduces the potential for misuse of the Auction by ATP Holders that are not legitimately interested in making a bona fide trade in the Auction.

CUBE Auction Process: RFRs, Response Time Interval and Responses

As noted above, upon receipt of a valid CUBE Order, the Exchange would announce the Auction by disseminating an RFR to all participants who subscribe to Auction messages over ArcaBook for options.[26] The RFR would identify the following characteristics of a CUBE Order: The series, the side of the market, the size, and the initiating price, which is consistent with the practice of other options exchanges.[27] The Exchange believes that including this level of detail in each RFR may lead to better prices for the CUBE Order.

After the RFR is disseminated, the Exchange would begin a random timer for the duration of the Auction, referred to as the Response Time Interval, which would last between 500 and 750 milliseconds. As proposed, the length of the Response Time Interval would be determined by the CUBE Auction mechanism following the receipt of a valid CUBE Order and contemporaneously with the dissemination of the RFR. The Exchange believes that the use of an undisclosed random Response Time Interval of between 500 and 750 milliseconds would provide the CUBE Auction with a functional difference to distinguish it from similar price improvement mechanisms offered by other exchanges.[28] The Exchange believes that the length of time allotted on the proposed Auction timer would provide ATP Holders with sufficient time to submit RFR Responses and would encourage competition among participants, thereby enhancing the potential for price improvement for the CUBE Order.[29]

During the Response Time Interval, any ATP Holder may respond to the RFR, either as principal or as agent on behalf of customers, provided such response is properly marked specifying price, size, and side of the market (each, an "RFR Response" or "Response").

The Exchange proposes to add the "GTX Order," which is a non-routable order with a time-in-force contingency for the Response Time Interval, and thus would be considered an RFR Response. As an RFR Response, the GTX Order must specify price, size, and side of the

[23] In this example, the initiating price is $2.05 and the permissible range of executions is $2.00–$2.05.

[24] *See* proposed Rule 971.1NY(c).

[25] *See, e.g.*, CBOE Rule 6.74A(b); ISE Rule 723(b)(3); ISE Rule 723 Supplementary Material .04.

[26] ArcaBook is a proprietary data feed offered by the Exchange and available to anyone (including all ATP Holders) by subscription. The RFRs for CUBE Auctions would be included in the options data feed at no incremental cost to the ArcaBook subscriber. Thus, any subscriber that opts to receive the options data, including any ATP Holder subscriber, has the ability to enter an order in response to those RFRs (*i.e.*, the election to receive RFRs would not be on a case-by-case basis).

[27] *See, e.g.*, CBOE Rule 6.74A(b)(1)(B); ISE Rule 723(c).

[28] *See, e.g.*, CBOE Rule 6.74A(b)(2)(A); PHLX Rule 1080(n)(ii)(B)(1); ISE Rule 723(c)(5)(I).

[29] In December 2013, to determine whether the proposed Auction timer would provide sufficient time to respond to an RFR, the Exchange asked ATP Holders that both subscribe to ArcaBook and act as Market Makers on the Exchange (the "Relevant ATP Holders") whether their firms "could respond to an Auction with a random duration of 500–750 milliseconds." Of the 21 Relevant ATP Holders that responded to the question, 100% (n = 21) indicated that their firm could respond in this time frame. Thus, the Exchange believes that the proposed Auction duration of at least 500 milliseconds, which is the mid-range of approved mechanisms at other market centers, would provide a meaningful opportunity for participants on NYSE Amex to respond to an Auction while at the same time facilitating the prompt execution of orders.

market. As proposed in Rule 971.1NY(c)(2)(C)(i):

- GTX Orders would not be displayed to the Consolidated Book or disseminated to any participants, *i.e.*, not sent to OPRA as these orders would only interact with liquidity available during the Auction;
- Any portion of a GTX Order that is not executed in the CUBE Auction would be cancelled at the conclusion of the Auction because a GTX order would only interact with liquidity available during the Auction—including any unrelated order that is marketable against a GTX Order that causes the early conclusion of the Auction per paragraph (c)(4) of this Rule;
- The minimum price increment for a GTX Order would be one cent, regardless of the MPV for the series involved in the Auction, to maximize opportunities for price improvement in the Auction;
- GTX Orders with a size greater than the CUBE Order, would be capped at the size of the CUBE Order, to enable interaction with the CUBE Order and to discourage manipulation of the Auction process;
- GTX Orders may be cancelled, which would afford ATP Holders opting to utilize this order type additional flexibility and control; and
- GTX Orders on the same side of the market as the CUBE Order will be rejected. Because GTX Orders can only trade against a CUBE Order or an unrelated order on the same side as a CUBE Order, same-side GTX Orders are unnecessary to the CUBE Auction process. Therefore, the Exchange proposes that same-side GTX Responses will be rejected. Rejecting same-side GTX Orders is consistent with the processing of same-side RFR Responses to the Exchange's Complex Order Auction.[30]
- For a CUBE Order to buy (sell), GTX Orders priced below (above) the lower (upper) bound of executions shall be repriced to the lower (upper) bound of executions, as specified in proposed paragraph (b)(1) of this Rule. For example, assuming the facts of Example 4a above, if before the BB is updated to $1.04, the Exchange receives a GTX Order to sell priced at $1.02, because the new lower bound is $1.04, that GTX Order would be repriced to $1.04. The Exchange believes that this practice will ensure that GTX Orders eligible to participate in the Auction will not be excluded if they are priced more aggressively than the lower (upper) bound of execution.

[30] *See* Rule 980NY(e)(4).

The Exchange believes that adding the GTX Order, which is good only for the duration of the Auction, would encourage participation in the Auction and would further enhance the opportunity for price improvement on the CUBE Order. The Exchange notes that the electronic price improvement auctions of other markets similarly utilize non-displayed trade interest in response to those auctions to enable market participants to enter non-displayed interest that would only participate in the auction. This type of non-displayed interest generally operates in the same manner as the Exchange's proposed GTX Order.[31]

The CUBE Auction would also consider any other unrelated orders and quotes ("unrelated orders") received during an Auction that are priced within the permissible range of executions as eligible to participate in the Auction. Because such unrelated orders would be eligible to participate in the Auction, the Exchange proposes to include these orders in the definition of RFR Responses, even if such unrelated orders were submitted coincidentally during an Auction, as opposed to purposefully in response to an RFR. Specifically, pursuant to proposed Rule 971.1NY(c)(2)(C)(ii), the Exchange would consider unrelated orders on the opposite side of the market and in the same series as the CUBE Order to be RFR Responses provided that the orders were received during the Response Time Interval; were not marked as GTX; and would be eligible to participate within the range of permissible executions specified by proposed paragraph (b)(1). The Exchange believes that considering these unrelated orders as RFR Responses should increase the number of participants against which the CUBE Order may be executed, and should thus maximize opportunities for price improvement on the CUBE Order.

However, the Exchange would not consider as RFR Responses those unrelated orders that either would not provide an opportunity for price improvement on the CUBE Order or would not trade at the initiating price of the CUBE Order. Specifically, pursuant to proposed Rule 971.1NY(c)(2)(C)(ii)(a), unrelated orders received during the Response Time Interval that are not marketable against the NBBO, not marked GTX, or are otherwise unable to participate in the Auction, would be posted to the Consolidated Book. In addition, unrelated orders received during the Response Time Interval that are on the same side of the market as the CUBE Order to buy (sell) and that are priced higher (lower) than the initiating price, and therefore would create a new BBO on the same side as the CUBE Order, shall be posted to the Consolidated Book and would result in an early conclusion of the Auction pursuant to paragraph (c)(4) of the proposed Rule. In both cases, as discussed further below, such unrelated orders would cause the Auction to conclude early. The Exchange believes that early conclusion would avoid disturbing priority in the Consolidated Book, in accordance with Rule 964NY, which dictates the priority of bids within the NYSE Amex System, and would allow the Exchange to appropriately handle unrelated orders without the Auction impacting that handling, while at the same time allowing the CUBE Order to execute against the Contra Order and any RFR Responses that may have been entered up to that point.

[31] *See, e.g.*, CBOE Rule 6.74A(b)(1) (non-displayed interest intended only for the auction may be cancelled); ISE Rule 723(c)(3) (non-displayed interest intended only for the auction may be modified, but not cancelled).

To be eligible to participate in the Auction, unrelated orders must be priced in the MPV for the series in the Auction. Only CUBE Orders, GTX Orders and Contra Orders—which are specifically slated for the Auction—would be permitted to be priced in one cent increments, regardless of the MPV for that option. The Exchange believes that it is appropriate to allow such orders to trade in one cent increments to enhance the opportunity for price improvement during the Auction. Thus, a quote or order other than a CUBE Order, GTX Order or Contra Order submitted in a one cent increment when the series has either a $0.05 or $0.10 MPV would be rejected as invalid. Rejecting quotes and orders with invalid prices submitted during an Auction is consistent with the treatment of invalid priced quote and orders entered at all other times.

Conclusion of the CUBE Auction and Order Allocation

As proposed in Rule 971.1NY(c)(3), and similar to the operation of price improvement mechanisms offered by other exchanges, the CUBE Auction would conclude at the end of the Response Time Interval.[32] However, as described in proposed Rule 971.1NY(c)(4) (and discussed below), certain events may result in the early conclusion of the CUBE Auction. Consistent with the rules of other exchanges that operate electronic price

[32] *See, e.g.*, CBOE Rule 6.74A(b)(2)(A); PHLX Rule 1080(n)(ii)(B)(1); ISE Rule 723(c)(5)(I).

improvement auctions, the Auction would conclude in the event of a trading halt in the affected series [33] and the CUBE Order would be executed per proposed Rule 971.1NY(c)(5).[34]

Proposed Rule 971.1NY(c)(5) sets forth the order allocation procedures for the CUBE Auction. Pursuant to proposed Rule 971.1NY(c)(5)(A), at each price level, any Customer orders resting on the Consolidated Book at the start of the CUBE Auction shall have first priority, followed by Customer orders that arrived during the CUBE Auction as RFR Responses. The Exchange notes, however, that pursuant to proposed paragraph (b)(1)(B), the permissible range of executions for a CUBE Order would have already preserved the integrity of the priority of any Customer orders resting at the start of the Auction. Generally, at the conclusion of the CUBE Auction, the Auction mechanism would determine whether the total RFR Responses can fill the CUBE Order at a price or prices better than the initiating price. If so, the CUBE Order is matched against the better-priced RFR Responses granting the CUBE Order the maximum amount of price improvement possible. As noted above, certain unrelated orders may be considered RFR Responses and may interact with the CUBE Order (thus maximizing opportunities for price improvement) and any portion of these unrelated orders remaining thereafter would be placed on the Consolidated Book.

When there are multiple RFR Responses at a given price, the CUBE Order would be executed against the RFR Responses on a pro-rata basis pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3), except that Customers at a given price are executed first in priority. The Exchange believes that, as proposed, the Auction maximizes the opportunity for price improvement while maintaining the priority of Customer orders. In addition, per proposed paragraph (c)(5), any single RFR Response that has a contract size that exceeds the size of the CUBE Order would be treated as if it were the same size as (*i.e.*, would be capped at) the size of the CUBE Order for allocation purposes, per Rule 964NY(b)(3). The Exchange believes that this would encourage participation in the Auction (by not rejecting these Responses) and would assist in avoiding the opportunity for an ATP Holder to subvert the size pro rata allocation method by submitting outsized trading interest.

The Exchange proposes that the Contra Order, having guaranteed the execution of the CUBE Order, should be entitled to a certain level of participation in the Auction, provided there is sufficient size remaining after better-priced interest and Customer interest has been satisfied. As proposed, assuming sufficient interest in the CUBE Order remains after executing against Customer interest or better-priced interest, the Contra Order would then be entitled to a participation guarantee equal to the greater of one contract or either (a) 40% of the size of the initial CUBE Order (if there are multiple RFR Responses to the Auction) or (b) 50% of the size of the initial CUBE Order (if there is only one RFR Response to the Auction). The Exchange believes that the proposed participation guarantee, which is consistent with the rules of this and other option exchanges, is a fair inducement in exchange for guaranteeing the entire size of the Initiating Participant's agency order (*i.e.*, the CUBE Order).[35] As discussed above, and similar to the operation of electronic auctions on other options exchanges, an Initiating Participant can opt to guarantee the execution of a CUBE Order via a single stop price, by auto-match or by specifying an auto-match limit price.[36]

Proposed paragraphs (b)(i)–(iii) to the proposed Rule set forth how a CUBE Order would trade with Responses and/or the Contra Order, which depends upon the RFR Responses, if any, and how the Contra Order guaranteed the execution of the CUBE Order. Pursuant to proposed Rule 971.1NY(c)(5)(B)(i), a CUBE Order guaranteed by a single stop price would first execute against better-priced Responses or Customer interest, and, if there is sufficient size remaining, the CUBE Order would then execute against the Contra Order at the stop price. It is possible, however, that after the CUBE Order executes against the better-priced RFR Responses, the Contra Order would not receive the full extent (or, perhaps, any) of its participation guarantee at the stop price, as shown in the second example below.

Examples of Trade Allocation—Single Stop Price

Example #6 (No Customer interest on BB):

NBBO = $1.15–$1.25 200 × 200
BBO = $1.15–$1.25 100 × 100
CUBE Order to buy 50 contracts with a limit price of $1.20
Contra Order selling 50 contracts with a single stop price of $1.20
Permissible range of executions is $1.15 to $1.20
RFR sent identifying the series, side and size, with initiating price of $1.20 (Auction Starts)
MM1GTX Order received @ 410 milliseconds Sell 5 at $1.17
MM4 GTX Order received @ 530 milliseconds Sell 10 at $1.18
MM3 GTX Order received @ 650 milliseconds Sell 40 at $1.20
651 milliseconds (Auction Ends)

Under this scenario the CUBE Order would be executed as follows:

5 contracts trade with MM1 @ $1.17
10 contracts trade with MM4 @ $1.18
20 contracts trade with the Contra Order @ $1.20 (This satisfies their 40% participation guarantee)
15 contracts trade with MM3 @ $1.20 (This fills the entire CUBE Order)

Example #7 (No Customer interest on BB):

NBBO = $1.15–$1.25 200 × 200
BBO = $1.15–$1.25 100 × 100
CUBE Order to buy 50 contracts with a limit price of $1.20
Contra Order selling 50 contracts with a single stop price of $1.20
Permissible range of executions is $1.15 to $1.20
RFR sent identifying the series, side and size, with initiating price of $1.20 (Auction Starts)
MM1GTX Order received @ 410 milliseconds Sell 20 at $1.17
MM4 GTX Order received @ 430 milliseconds Sell 20 at $1.18
MM3 GTX Order received @ 450 milliseconds Sell 40 at $1.20
557 milliseconds (Auction Ends)

Under this scenario, the CUBE Order would be executed as follows:

20 contracts trade with MM1 @ $1.17
20 contracts trade with MM4 @ $1.18
10 contracts trade with the Contra Order @ $1.20 (Contra Order does not receive 40% participation guarantee because there is not sufficient size available)
(This fills the entire CUBE Order)
MM3 does not trade any contracts

Example of Trade Allocation—Single Stop Price & Unrelated Order

Example #8 (No Customer interest on BB):

[33] *See, e.g.*, CBOE Rule 6.75A(b)(2)(F); PHLX Rule 1080(n)(ii)(B)(3).

[34] Because the execution of the CUBE Auction is deemed to have occurred at the time the CUBE Auction is initiated, if a trading halt occurs in the series during the Response Time Interval causing the Auction to conclude early, the Exchange does not believe that such execution needs to be nullified pursuant to Rule 953NY Commentary .03.

[35] *See, e.g.*, Rule 934.1NY(4)(A) (providing for a 40% allocation for facilitation orders in facilitation cross transactions). *See also* PHLX Rule 1080(n)(2)(E)(2)(a) (providing up to 50% allocation with participation guarantees); ISE Rule 713 Commentary .03 (providing up to 60% allocation for participation guarantees); CBOE Rule 6.74A(b)(3)(F).

[36] *See, e.g.*, CBOE Rule 6.74A(b)(3); PHLX Rule 1080(n)(ii)(E); ISE Rule 723(d)(4); BOX Rule 7150(g)(1).

NBBO = $1.20–$1.24 200 × 100
BBO = $1.20–$1.24 100 × 100
CUBE Order to buy 20 contracts with a limit of $1.22
Contra Order selling 20 contracts with a single stop price of $1.22
Permissible range of executions is $1.20 to $1.22
RFR sent identifying the series, side and size, with initiating price of $1.22
(Auction Starts)
MM3 GTX Order received @ 200 milliseconds Sell 20 at $1.22
MM1GTX Order received @ 210 milliseconds Sell 20 at $1.22
MM4 GTX Order received @ 230 milliseconds Sell 20 at $1.22
F1 Unrelated Order received @ 400 milliseconds Sell 50 at $1.21
523 milliseconds (Auction concludes)

Under this scenario the CUBE Order would be executed as follows:

20 contracts trade with the unrelated order for F1 @ $1.21 (the best-priced Response)
(This fills the CUBE Order in its entirety and the Contra Order does not receive an execution)
GTX responses cancel
30 contracts remaining from the unrelated order for F1 post to the Consolidated Book resulting in new BBO
BBO = $1.20–$1.21 100 × 30

Where the Initiating Participant elects auto-match or auto-match limit to guarantee the execution of a CUBE Order, the Contra Order would be allocated size equal to all other RFR Responses at each price point or at each price point within the limit price range—if a limit is specified—until a price point is reached where the balance of the CUBE Order could be fully executed (the "clean-up price"). At the clean-up price, if there is sufficient interest in the CUBE Order remaining after better-priced interest and Customer interest has been executed, the Contra Order would be allocated additional contracts to ensure its guaranteed participation rate—the greater of one contract or 40% (or 50%, if only one Response) of the size of the initial CUBE Order. If the Contra Order meets its allocation guarantee at a price below (above) the clean-up price, it will cease matching RFR Responses that may be priced above (below) the price at which the Contra Order received its allocation guarantee. In addition, if there are other RFR Responses at the clean-up price, the remaining CUBE Order contracts will be allocated pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3) and any remaining CUBE Order contracts shall be allocated to the Contra Order at the initiating price. In the event that there are no RFR Responses to the Auction and an auto-match feature is selected, the CUBE Order shall execute against the Contra Order at the initiating price.

Examples of Trade Allocation—Auto-Match and Auto-Match limit

Example #9 (No Customer interest on BB):

NBBO = $1.15–$1.25 200 × 200
BBO = $1.15–$1.25 100 × 100
CUBE Order to buy 50 contracts with a limit price of $1.24
Contra Order selling 50 contracts auto-match
Permissible range of executions is $1.15 to $1.24
RFR sent identifying the series, side and size, with initiating price of $1.24
(Auction Starts)
MM2 GTX Order received @ 350 milliseconds Sell 5 at $1.17
MM4 GTX Order received @ 430 milliseconds Sell 10 at $1.18
MM3 GTX Order received @ 450 milliseconds Sell 40 at $1.21
623 milliseconds (Auction Ends)

Under this scenario the CUBE Order would be executed as follows:

5 contracts trade with MM2 @ $1.17
5 contracts trade with Contra Order @ $1.17 (due to auto-match)
10 contracts trade with MM4 @ $1.18
10 contracts trade with Contra Order @ $1.18 (due to auto-match)
5 contracts trade with Contra Order @ $1.21 (due to auto-match capped at 40% participation guarantee)
15 contracts trade with MM3 @ $1.21 (the Contra Order trades zero contracts at this price having already received their 40% participation guarantee at $1.21)
(This fills the entire CUBE Order)

Example #10 (No Customer interest on BB):

NBBO = $1.15–$1.25 200 × 200
BBO = $1.15–$1.25 100 × 100
CUBE Order to buy 51 contracts with a limit price of $1.25
Contra Order selling 51 contracts auto-match limit at $1.17
Permissible range of executions is $1.15 to $1.25
RFR sent identifying the series, side and size, with initiating price of $1.25
(Auction Starts)
MM2 GTX Order received @ 150 milliseconds Sell 20 at $1.16
MM5 GTX Order received @ 200 milliseconds Sell 5 at $1.19
MM4 GTX Order received @ 230 milliseconds Sell 10 at $1.18
MM3 GTX Order received @ 450 milliseconds Sell 50 at $1.19
623 milliseconds (Auction Ends)

Under this scenario the CUBE Order would be executed as follows:

20 contracts trade with MM2 @ $1.16
10 contracts trade with MM4 @ $1.18
10 contracts trade with Contra Order @ $1.18 (due to auto-match limit)
10 contracts trade with Contra Order @ $1.19 (due to auto-match limit and fulfills their 40% guarantee)
1 contract trades with MM3 @ $1.19
(This fills the entire CUBE Order)

Early Conclusion of a CUBE Auction

As noted earlier, the CUBE Auction is integrated seamlessly within the Exchange's Consolidated Book and is designed to maintain the priority of all resting quotes and orders and any timely RFR Responses, as well as unrelated orders that are marketable at the time of arrival. Thus, as proposed, a CUBE Auction would conclude early (*i.e.*, before the end of the Response Time Interval) as a result of certain events that would otherwise disrupt the priority of the Auction within the Consolidated Book. The Exchange notes that this is consistent with how the electronic price improvement auctions of other markets operate.[37]

Proposed Rule 971.1NY(c)(4), explains how a CUBE Order would be allocated as a result of each of the events that would cause the early conclusion of an Auction.[38] First, pursuant to proposed Rule 971.1NY(c)(4)(A), if, during a CUBE Auction, a new CUBE Auction in the same series is received by the Exchange, the original CUBE Order would conclude and execute pursuant to proposed Rule 971.1NY(c)(5) and the new CUBE Auction would proceed as described in proposed Rule 971.1NY(c). The Exchange believes that this practice is consistent with the rules of other exchanges operating electronic auctions, which would ensure a fair and orderly market by maintaining the priority of the Consolidated Book while still affording the opportunity for price improvement on each Auction commenced on the Exchange.[39]

Second, pursuant to proposed Rule 971.1NY(c)(4)(B), if, during a CUBE Auction the Exchange receives an unrelated quote or order that is on the

[37] *See, e.g.*, CBOE 6.74A(b); PHLX 1080(n)(ii); ISE Rule 723 Supplementary Material .04; BOX Rule 7150(i).

[38] Pursuant to proposed Rule 971.1NY(c)(3), and as discussed herein, a trading halt in the affected series would also result in the early conclusion of an Auction and contracts would be allocated pursuant to proposed paragraph (c)(5).

[39] *See, e.g.*, CBOE Rule 6.74A(b); ISE Rule 723(b)(3); ISE Rule 723 Supplementary Material .04. The Exchange notes that although these rules specify that auctions may not overlap or queue in any manner, the rules are nonetheless silent on how this is enforced (*i.e.*, by rejecting new auction orders or by concluding an ongoing auction early).

same side of the market as the CUBE Order, that is marketable against any RFR Response or the NBBO (or BBO, if a non-routable order)[40] at the time of arrival, the Auction will conclude early so that this incoming order may be executed following the execution of the CUBE Order (which has priority), consistent with the terms of the unrelated incoming order. The CUBE Order, upon its early conclusion, will execute pursuant to proposed paragraph (c)(5). The Exchange notes that this practice is consistent with how the electronic price improvement auctions of other markets operate.[41] If there is sufficient size to the RFR Responses remaining after executing against the CUBE Order, the order that caused the early conclusion of the Auction would trade with the remaining RFR Responses at the best available prices, which may be better than the NBBO (or BBO for non-routable orders).[42]

The Exchange believes the early conclusion of the Auction in this instance would ensure that the priority of quotes and orders on the Consolidated Book would not be disrupted. In this circumstance, those GTX Orders that do not execute in the CUBE Auction would execute against the unrelated order that caused the CUBE Auction to conclude early to the extent possible (maximizing price improvement for the incoming same-side marketable quote or order that caused the early conclusion to the Auction) and would then cancel. Any contracts remaining from any unrelated order when the RFR Responses have been exhausted would be processed in accordance with Rule 964NY Order Display and Priority.

Example of Early Conclusion of Auction—Same Side Marketable Against NBBO at the Time of Arrival

Example #11 (No Customer interest on BB):

NBBO = $1.20–$1.24 200 × 200
BBO = $1.20–$1.24 100 × 100
CUBE Order to buy 20 contracts for $1.23
Contra Order selling 20 contracts auto-match limit at $1.22
Permissible range of executions is $1.21 to $1.23
RFR sent, identifying the series, side and size, initiating price of $1.23
(Auction Starts)
MM3 GTX Order received @ 200 milliseconds Sell 20 at $1.23
MM1GTX Order received @ 210 milliseconds Sell 20 at $1.22
MM4 GTX Order received @ 230 milliseconds Sell 20 at $1.22
C1 Unrelated Order received @ 250 milliseconds Buy 100 at the market
(Same-side order marketable against the NBO causes an early conclusion to the Auction)

Under this scenario, the CUBE Order would be executed as follows:

8 contracts trade with the Contra Order @ $1.22 (This satisfies their 40% participation guarantee)
6 contract trades with MM1 @ $1.22
6 contract trades with MM4 @ $1.22
(This fills the entire CUBE Order)

C1 unrelated order to buy 100 at the market then executes as follows:

14 contracts trade with MM1 @ $1.22
14 contracts trade with MM4 @ $1.22
20 contracts trade with MM3 @ $1.23
The remaining 52 contracts from C1 unrelated order are handled pursuant to existing Rule 964NY(in this case, that means the 52 contracts would trade with the interest comprising the BO, which was offering 100 contracts at $1.24)

The third scenario that would result in the early conclusion of a CUBE Auction would be if, during a CUBE Auction, the Exchange receives any RFR Response that is marketable against the NBBO (or BBO, if a non-routable order) at the time of arrival. The RFR Response could be a GTX Order or an unrelated order that is a marketable limit order or a market order. While the incoming order that is on the opposite side of the CUBE Order may be marketable against the updated NBBO, as noted above, the fact that the NBBO updated during the Response Time Interval in of itself does not cause an early conclusion to the Auction.

Pursuant to proposed Rule 971.1NY(c)(4)(i), if the CUBE Auction concludes early because the Exchange receives during the Response Time Interval an unrelated marketable limit order or quote on the opposite side of the CUBE Order, the CUBE Order would execute pursuant to proposed paragraph (c)(5). Contracts remaining, if any, from unrelated quotes or orders at the time the Auction concludes would be processed in accordance with Rule 964NY Order Display and Priority. Any unfilled GTX Orders would cancel. The Exchange believes that early conclusion in this circumstance would ensure that the Auction interacts seamlessly with the Consolidated Book so as not to disturb the priority of orders on the Book. The unrelated order or quote that caused the Auction to end early would be considered an RFR Response for purposes of allocation pursuant to proposed paragraph (c)(5), and thus would participate in the Auction consistent with its limit price and order instructions. The Exchange also notes that concluding the Auction early under this circumstance is consistent with how the electronic price improvement auctions of other markets operate.[43]

Example of Early Conclusion of Auction—Opposite Side Limit Order Marketable Against NBBO at the Time of Arrival

Example #12a (No Customer interest on BB):

NBBO = $1.20–$1.24 200 × 100
BBO = $1.20–$1.24 100 × 100
CUBE Order to buy 50 contracts with a limit of $1.24
Contra Order selling 50 contracts with a stop price of $1.24
Permissible range of executions $1.20–$1.24
RFR sent identifying the series, side and size, initiating price of $1.24
(Auction Starts)
MM3 GTX Order received @ 200 milliseconds Sell 50 at $1.22
MM1 GTX Order received @ 210 milliseconds Sell 50 at $1.22
MM4 GTX Order received @ 230 milliseconds Sell 50 at $1.23
BD1 Unrelated Order received @ 400 milliseconds Sell 10 at $1.20
(Opposite-side order marketable against the NBB causes an early conclusion to the Auction)

Under this scenario, the CUBE Order would be executed as follows:

10 contracts trade with the unrelated order for BD1 @ $1.20
20 contracts trade with MM3 @ $1.22
20 contracts trade with MM1 @ $1.22
(This fills the entire CUBE Order)
MM4 does not trade any contracts
Contra Order does not trade any contracts

Example #12b: (Customer interest on BB):

NBBO = $1.20–$1.24 200 × 100
BBO = $1.20–$1.24 100 × 100
CUBE Order to buy 50 contracts with a limit of $1.24

[40] The Exchange notes that an order that has been designated as an order type that is not eligible to be routed away will either be placed on the Consolidated Book or cancelled if such order would lock or cross the NBBO. *See* Rule 964NY(c)(2)(E). If an incoming non-routable order is marketable against the NBBO, but not the BBO, and by its terms, such order would cancel, *e.g.*, an IOC Order, it would not cause an early conclusion to an Auction. However, if such an order were marketable against the BBO, *i.e.*, if the BBO equaled the NBBO, it would cause an early conclusion to the Auction.

[41] *See, e.g.*, CBOE Rule 6.74A(b)(2)(B); PHLX Rule 1080(n)(ii)(B)(2); ISE Rule 723(c)(5); BOX Rule 7150(i).

[42] *See, e.g.*, CBOE Rule 6.74A(b)(3)(J).

[43] *See, e.g.*, CBOE 6.74A(b)(2)(B); ISE Rule 723(c)(5); BOX 7150(j).

Contra Order selling 50 contracts with a stop price of $1.24
Permissible range of executions is $1.21 to $1.24
RFR sent identifying the series, side and size, initiating price of $1.24
(Auction Starts)
MM3 GTX Order received @ 200 milliseconds Sell 50 at $1.22
MM1 GTX Order received @ 210 milliseconds Sell 50 at $1.22
MM4 GTX Order received @ 230 milliseconds Sell 50 at $1.23
BD1 Unrelated Order received @ 400 milliseconds Sell 10 at $1.20
(Opposite-side order marketable against the NBB causes an early conclusion to the Auction)

Under this scenario, the CUBE Order would be executed as follows:

10 contracts trade with the unrelated order for BD1 @ $1.21 (Customer on the BB, so allowable range must improve BB by .01)
20 contracts trade with MM3 @ $1.22
20 contracts trade with MM1 @ $1.22
(This fills the entire CUBE Order)
MM4 does not trade any contracts
Contra Order does not trade any contracts

Example #12c (No Customer interest on BB and updated NBB during Auction):

NBBO = $1.20–$1.24 200 x 100
BBO = $1.20–$1.24 100 x 100
CUBE Order to buy 50 contracts with a limit of $1.24
Contra Order selling 50 contracts with a stop price of $1.24
Permissible range of executions $1.20–$1.24
RFR sent identifying the series, side and size, initiating price of $1.24
(Auction Starts)
MM3 GTX Order received @ 200 milliseconds Sell 50 at $1.22
MM1 GTX Order received @ 210 milliseconds Sell 50 at $1.22
MM4 GTX Order received @ 230 milliseconds Sell 50 at $1.23
New NBB posted on an away market $1.23
(New NBB does not cause early conclusion) [44]
BD1 Unrelated Order received @ 400 milliseconds Sell 10 at $1.21
(Opposite-side order marketable against the updated NBB causes an early conclusion to the Auction)

Under this scenario, the CUBE Order would be executed as follows:

10 contracts trade with the unrelated order for BD1 @ $1.21
20 contracts trade with MM3 @ $1.22
20 contracts trade with MM1 @ $1.22
(This fills the entire CUBE Order)
MM4 does not trade any contracts
Contra Order does not trade any contracts

Example #12d (No Customer interest on BB and updated BB during Auction):

NBBO = $1.20–$1.24 200 x 100
BBO = $1.20–$1.24 100 x 100
CUBE Order to buy 50 contracts with a limit of $1.24
Contra Order selling 50 contracts with a stop price of $1.24
Permissible range of executions $1.20–$1.24
RFR sent identifying the series, side and size, initiating price of $1.24
(Auction Starts)
MM3 GTX Order received @ 200 milliseconds Sell 50 at $1.24
MM1 GTX Order received @ 210 milliseconds Sell 50 at $1.22
MM4 GTX Order received @ 230 milliseconds Sell 50 at $1.22
MM5 unrelated quote received @500 milliseconds Buy 10 at $1.21
(New BB adjusts range of permissible executions but does not cause early conclusion) [45]
MM6 GTX Order received @ 550 milliseconds Sell 10 at $1.20
(Opposite-side order marketable against the updated BB causes an early conclusion to the Auction) [46]

Under this scenario, the CUBE Order would be executed as follows:

10 contracts trade with MM6 @ $1.21 (the GTX order has been re-priced to reflect the new BB [47]
20 contracts trade with MM1 @ $1.22
20 contracts trade with MM4 @ $1.22
(This fills the entire CUBE Order)
MM3 does not trade any contracts
Contra Order does not trade any contracts

If the order that causes the Auction to conclude early is a market order on the opposite side of the CUBE Order, the allocation of the CUBE Order varies depending on how the Contra Order guaranteed the execution of the CUBE Order and what, if any, RFR Responses are received before the Auction concludes early. Proposed paragraph (c)(4)(C)(ii) provides that if auto-match is selected and no RFR Responses have arrived at the time the Auction concludes early, if the CUBE Order is to buy (sell) and the unrelated order that caused the Auction to conclude early is a market order to sell (buy), the CUBE Order would execute against the unrelated market order at the midpoint of the initiating price and the lower (upper) bound of the range of permissible executions, as shown in the example below.[48] If no midpoint is possible, the execution would be rounded up (down) to the nearest whole penny toward the initiating price. The Exchange believes that rounding in this manner ensures not only that the CUBE Order is afforded price improvement, but also that the priority of existing interest in the Consolidated Book is protected.

Example of Early Conclusion of Auction—Opposite Side Market Order w/Auto-Match and no Responses

Example #13 (No Customer interest on BB):

NBBO = $1.15–$1.25 200 x 200
BBO = $1.15–$1.25 100 x 100
CUBE Order to buy 50 contracts with a limit of $1.20
Contra Order selling 50 contracts with Auto-match
Permissible range of executions $1.15—$1.20
RFR sent identifying the series, side and size, with initiating price of $1.20
(Auction Starts)
BD1 Order received @ 490 milliseconds Sell 5 at the market
(Opposite-side market order causes an early conclusion to the Auction)

Under this scenario, the CUBE Order would be executed as follows:

5 contracts trade with BD1 @ $1.18 (midpoint of the initiating price and the lower bound of the range of permissible prices, here the NBB, rounded up to nearest whole $.01 closer to the initiating price) [49]
5 contracts with Contra Order at $1.18 (Auto-match)
40 contracts trade with Contra Order at $1.20 (the initiating price)
(This fills the entire CUBE Order)

Example #13a (No Customer interest on BB and update to BB):

NBBO = $1.15–$1.25 200 x 200
BBO = $1.15–$1.25 100 x 100
CUBE Order to buy 50 contracts with a limit of $1.20

[44] *See* Rule 991NY(b)(5).

[45] *See* proposed Rule 971.1NY(b)(1)(C).

[46] *See* proposed Rule 971.1NY(c)(4)(C).

[47] *See* proposed Rule 971.1NY(c)(2)(C)(i)(f).

[48] As noted above, the Auction may execute orders in the Auction as exceptions to Trade-Through Liability pursuant to Rule 991NY(b)(5). Accordingly, an opposite-side market order that arrives during the Auction, which by definition is less than a second, may trade through any updated NBBO published by an away market. Because, pursuant to proposed Rule 971.1NY(b)(3), an update to the CUBE Order's same-side BBO would update the permissible range of executions, an opposite-side market order would execute consistent with that updated permissible range of executions.

[49] In this scenario, the execution between the contra side market order and the CUBE Order should occur at the midpoint of the CUBE Order initiating price and the BBO on the same side of the market as the CUBE Order. In this case, that is the midpoint between $1.15 and $1.20 or $1.175. In such situations, where the midpoint is less than a full cent, the execution will round back towards the CUBE Order initiating price—in this case, $1.18.

Contra Order selling 50 contracts with Auto-match
Permissible range of executions $1.15–$1.20
RFR sent identifying the series, side and size, with initiating price of $1.20
(Auction Starts)
MM1 Quote received @ 200 milliseconds Buy 100 at $1.18
(New BB updates range of executions to $1.18–$1.20)
BD1 Order received @ 490 milliseconds Sell 5 at the market
(Opposite-side market order causes an early conclusion to the Auction)

Under this scenario, the CUBE Order would be executed as follows:

5 contracts trade with BD1 @ $1.19 (midpoint of the initiating price and the lower bound of the range of permissible prices)
5 contracts with Contra Order at $1.19 (Auto-match)
40 contracts trade with Contra Order at $1.20 (the initiating price)
(This fills the entire CUBE Order)

Proposed paragraph (c)(4)(C)(iii) provides that when auto-match is selected and other RFR Responses are received before the arrival of the market order that caused the Auction to conclude early, if the CUBE Order is to buy (sell) and the market order is to sell (buy), the CUBE Order would execute against the unrelated market order at the lowest (highest) RFR Response price within the range of permissible executions. The Exchange believes this would maximize the opportunities for price improvement, while maintaining the priority of the Consolidated Book.

Example of Early Conclusion of Auction—Opposite Side Market Order w/Auto-Match and Responses before Early Conclusion

Example #14 (No Customer interest on BB):

NBBO = $1.15–$1.25 200 x 200
BBO = $1.15–$1.25 100 x 100
CUBE Order to buy 50 contracts with a limit of $1.20
Contra Order selling 50 contracts with Auto-match
Permissible range of executions $1.15–$1.20
RFR sent identifying the series, side and size, with initiating price of $1.20
(Auction Starts)
MM4 GTX Order received @ 230 milliseconds Sell 10 at $1.18
MM3 GTX Order received @ 450 milliseconds Sell 40 at $1.20
BD1 Order received @ 490 milliseconds Sell 5 at the market
(Opposite-side market order causes an early conclusion to the Auction)

Under this scenario, the CUBE Order would be executed as follows:

5 contracts trade with BD1 @ $1.18 (market order executes at lowest RFR Response price within permissible price range, which is the $1.18 offer from MM4 received at 230 milliseconds)
10 contracts trade with MM4 @ $1.18
15 contracts trade with Contra Order @ $1.18 (Auto-match other RFR Response prices)
5 contracts trade with the Contra Order @ $1.20 (This satisfies their 40% participation guarantee)
15 contracts trade with MM3 @ $1.20
(This fills the entire CUBE Order)

Pursuant to proposed Rule 971.1NY(c)(4)(C)(iv), and as illustrated by the examples that follow, if the Initiating Participant has selected a single stop price or auto-match limit to guarantee the execution of a CUBE Order to buy (sell), and the order that caused the Auction to conclude early is a market order to sell (buy), the CUBE Order would execute against the unrelated market order at the lowest (highest) price at which an execution could occur within the range of permissible executions, which may be either an RFR Response price, the single stop price, or the auto-match limit price.

Example of Early Conclusion of Auction—Opposite Side Market Order w/Stop Price

Example #15 (No Customer interest on BB):

NBBO = $1.15–$1.25 200 x 200
BBO = $1.15–$1.25 100 x 100
CUBE Order to buy 50 contracts with a limit of $1.20
Contra Order selling 50 contracts with single stop price of $1.20
Permissible range of executions $1.15-$1.20
RFR sent identifying the series, side and size, with initiating price of $1.20
(Auction Starts)
MM4 GTX Order received @ 230 milliseconds Sell 10 at $1.19
MM3 GTX Order received @ 450 milliseconds Sell 40 at $1.20
BD1 Order received @ 490 milliseconds Sell 5 at the market
(Opposite-side market order causes an early conclusion to the Auction)

Under this scenario, the CUBE Order would be executed as follows:

5 contracts trade with BD1 @ $1.19 (lowest-priced Response received during the Auction)
10 contracts trade with MM4 @ $1.19
20 contracts trade with the Contra Order @ $1.20 (This satisfies their 40% participation guarantee)
15 contracts trade with MM3 @ $1.20
(This fills the entire CUBE Order)

Example of Early Conclusion of Auction—Opposite Side Market Order w/Auto-Match limit

Example #16 (No Customer interest on BB):

NBBO = $1.20–$1.24 200 x 100
BBO = $1.20–$1.25 100 x 100
CUBE Order to buy 20 contracts with a limit of $1.24
Contra Order selling 20 contracts with an auto-match limit price of $1.23
Permissible range of executions $1.21–$1.24
RFR sent identifying the series, side and size, with initiating price of $1.24
(Auction Starts)
MM3 GTX Order received @ 200 milliseconds Sell 20 at $1.23
MM1GTX Order received @ 210 milliseconds Sell 20 at $1.23
MM4 GTX Order received @ 230 milliseconds Sell 20 at $1.23
BD1 Unrelated Order received @ 400 milliseconds Sell 10 at Market
(Opposite-side market order causes early conclusion to the Auction)

Under this scenario, the CUBE Order would be executed as follows:

10 contracts trade with the unrelated order for BD1 @ $1.23 (the lowest priced Response received during the Auction.)
8 contracts trade with Contra Order @ $1.23 (this satisfies their 40% participation guarantee)
1 contract trades with MM3 @ $1.23
1 contract trades with MM1 @ $1.23
(This fills the entire CUBE Order)
MM4 does not trade any contracts [50]

The Auction would also conclude early upon the arrival of an unrelated, non-marketable quote or limit order, that improves the CUBE Order's initiating price, pursuant to proposed Rule 971.1NY(c)(4)(D). Specifically, if, during a CUBE Auction where the CUBE Order is to buy (sell), the Exchange receives such a non-marketable unrelated order that is on the same side of the market as the CUBE Order that is priced higher (lower) than the initiating price, and therefore creates a new BB (BO) that is higher (lower) than the initiating price, the CUBE Order would execute pursuant to proposed paragraph (c)(5). Any unfilled GTX Orders would be eligible to execute against the unrelated order that caused the CUBE Auction to conclude early and would then cancel. Any contracts that remain from the unrelated non-marketable order after that order trades against interest in the Auction would then be processed in accordance with Rule

[50] MM4 receives no allocation pursuant to Rule 964NY(b)(3), which defaults to time-priority allocation when, as here, the bids are equal.

964NY Order Display and Priority. The Exchange believes that early conclusion in this circumstance would ensure that the Auction interacts seamlessly with the Consolidated Book so as not to disturb the priority of orders on the Book, while affording the CUBE Order (and the unrelated order) opportunities for price improvement.

Example of Early Conclusion of Auction—Same Side New BBO Improves Initiating Price

Example #17 (No Customer interest on BB):

NBBO = $1.20–$1.24 200 x 200
BBO = $1.20–$1.24 100 x 100
CUBE Order to buy 20 contracts with a limit price of $1.22
Contra Order selling 20 contracts at $1.22
Permissible range of executions $1.21–$1.22
RFR sent identifying the series, side and size, with an initiating price of $1.22
(Auction Starts)
MM3 GTX Order received @ 300 milliseconds Sell 20 at $1.22
MM1 GTX Order received @ 310 milliseconds Sell 20 at $1.22
MM4 GTX Order received @ 430 milliseconds Sell 20 at $1.22
C1 Unrelated Order received @ 550 milliseconds Buy 100 at $1.23
(Same side limit order to buy that improves (*i.e.*, is priced higher than) the CUBE Order's initiating price causes the Auction to conclude early)

Under this scenario, the CUBE Order would be executed as follows:

8 contracts trade with the Contra Order @ $1.22 (This satisfies their 40% participation guarantee)
4 contract trades with MM3 @ $1.22
4 contract trades with MM1 @ $1.22
4 contracts trade with MM4 @ $1.22
(This fills the entire CUBE Order)

C1 unrelated order then executes as follows:

16 contracts trade with MM3 @ $1.22
16 contracts trade with MM1 @ $1.22
16 contracts trade with MM4 @ $1.22
Remaining contracts post to the Consolidated Book as new BB paying $1.23 for 52 contracts

The final scenario that would result in the early conclusion of an Auction, pursuant to proposed Rule 971.1NY(c)(4)(E), would occur if, during the Auction, the Exchange received interest sufficient to fill a resting AON order. After the early conclusion of the Auction, the CUBE Order would execute pursuant to paragraph (c)(5) and the Exchange would then determine whether the AON could be executed against interest in the Auction. The Exchange believes that early conclusion in this circumstance would ensure that the Auction interacts seamlessly with the Consolidated Book so as not to disturb the priority of orders on the Book, while affording the CUBE Auction opportunities for price improvement.

Example of Early Conclusion of Auction—Sufficient Interest To Fill AON Order Received During Response Time Interval

Example #18 (No Customer interest on BB):

NBBO = $1.20–$1.24 200 x 200
BBO = $1.20–$1.24 100 x 100
CUBE Order to buy with a limit price of $1.22 for 20 contracts
Contra Order selling 20 contracts with a single stop price of $1.22
Permissible range of executions $1.21–$1.22
RFR sent identifying the series, side and size, with initiating price of $1.22
Resting AON Order to buy 20 contracts at $1.21
(Auction Starts)
MM3 GTX Order received @ 200 milliseconds Sell 20 at $1.21
(Arriving interest sufficient to fill resting AON order to buy causes the Auction to conclude early)

Under this scenario, the CUBE Order would be executed as follows:

20 contracts trade with MM3 @ $1.21
(This fills the entire CUBE Order)
Contra Order does not trade
System reevaluates whether AON can be executed and concludes cannot, because interest executed with CUBE Order.

Conduct Inconsistent With Just and Equitable Principles of Trade

The Exchange is proposing Commentary to the Rule to set forth that certain activity in connection with the CUBE Auction would be considered conduct inconsistent with just and equitable principles of trade to discourage ATP Holders from attempting to misuse or manipulate the Auction process. This practice is consistent with the rules of other options exchanges that offer electronic price improvement auction mechanisms.[51] Specifically, pursuant to proposed Commentary .02 (a)–(d) to Rule 971.1NY, the Exchange proposes that the following conduct would be considered conduct inconsistent with just and equitable principles of trade:

(a) An ATP Holder entering RFR Responses to a CUBE Auction for which the ATP Holder is the Initiating Participant. The Exchange believes this would prevent Initiating Participants from submitting an inaccurate or misleading stop price or trying to improve their allocation entitlement by participating with multiple expressions of interest.

(b) Engaging in a pattern and practice of entering unrelated orders and quotes for the purpose of causing a CUBE Auction to conclude early, *i.e.*, before the end of the Response Time Interval. The Exchange believes this would prevent an ATP Holder from shortening the duration of the Auction thus possibly reducing the number of Responses to an Auction in order to gain a higher contract allocation than the percentage the ATP Holder may have otherwise received had the Auction not concluded early.

(c) An Initiating Participant that breaks up an agency order into separate CUBE Orders for the purpose of gaining a higher allocation percentage than the Initiating Participant would have otherwise received in accordance with the allocation procedures contained in proposed paragraph (c)(5) to proposed Rule 971.1NY. The Exchange believes this would prevent Initiating Participants from manipulating the CUBE Orders size and number to gain a higher guaranteed execution than the Initiating Participant would have otherwise received.

(d) Engaging in a pattern and practice of sending multiple RFR Responses at the same price that in the aggregate exceed the size of the CUBE Order. The Exchange believes this will prevent ATP Holders from attempting to misuse or manipulate the allocation process.

Order Exposure and Prohibited Conduct

Current Rule 935NY prohibits Users[52] from executing as principal any orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second or (ii) the User has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This rule helps to ensure that orders are properly exposed to market participants, affording them a reasonable amount of time in which to participate in the execution of the agency order.

As previously stated in this filing, the Exchange believes that the proposed Response Time Interval, with a random length of between 500 and 750 milliseconds, is of sufficient length so as

[51] *See, e.g.*, PHLX Rule 1080(n)(iii)–(v); ISE Rule 723 Supplementary Material .01; BOX IM–7150–2(a) and (b).

[52] Rule 900.2NY(87) defines User as any ATP Holder that is authorized to obtain access to the System.

to permit ATP Holders time to respond to a CUBE Auction thereby enhancing opportunities for competition among participants and increasing the likelihood of price improvement for the CUBE Order. Accordingly, the Exchange proposes to amend Rule 935NY to stipulate that a User may execute as principal an order that the User represents as agent, provided that the User avails him or herself of the CUBE Auction process, pursuant to Rule 971.1NY. Such CUBE Order would not be subject to the one-second order exposure requirement of Rule 935NY, which exclusion from the one-second order exposure requirement is consistent with the treatment of similar orders at BOX Options.[53] Consistent with Rule 935NY Commentary .01, ATP Holders shall only utilize the Auction where there is a genuine intention to execute a bona fide transaction.[54]

Proposed Pilot Period for Auctions of Fewer Than 50 Contracts

The Exchange is proposing that proposed Rules 971.1NY(b)(1)(B) (regarding CUBE Auctions for fewer than 50 contracts) and 971.1NY(b)(8) (that the minimum size for an Auction shall be one contract) be adopted for a pilot period effective for one year beginning on the approval date for this rule proposal. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the CUBE Auction. Any data that is submitted to the Commission will be provided on a confidential basis.

To aid the Commission in its evaluation of the Pilot Program, the Exchange will provide the following additional information each month:

(1) The number of orders of 50 contracts or greater entered into the CUBE Auction;

(2) The number of orders of fewer than 50 contracts entered into the CUBE Auction;

(3) The percentage of all orders of 50 contracts or greater sent to the Exchange that are entered into the CUBE;

(4) The percentage of all orders of fewer than 50 contracts sent to the Exchange that are entered into the CUBE Auction;

(5) The percentage of all Exchange trades represented by orders of fewer than 50 contracts;

(6) The percentage of all Exchange trades effected through the CUBE Auction represented by orders of fewer than 50 contracts;

(7) The percentage of all contracts traded on the Exchange represented by orders of fewer than 50 contracts;

(8) The percentage of all contracts effected through the CUBE Auction represented by orders of fewer than 50 contracts;

(9) The spread in the option, at the time an order of 50 contracts or greater is submitted into the CUBE Auction;

(10) The spread in the option, at the time an order of fewer than 50 contracts is submitted into the CUBE Auction;

(11) Of CUBE Auction trades for orders of fewer than 50 contracts, the percentage of CUBE Auction trades executed at the NBBO, NBBO plus $.01, NBBO plus $.02, NBBO plus $.03, etc.;

(12) Of CUBE Auction trades for orders of 50 contracts or greater, the percentage of CUBE Auction trades executed at the NBBO, NBBO plus $.01, NBBO plus $.02, NBBO plus $.03, etc.;

(13) The number of orders submitted by an ATP Holder when the bid-ask spread was at a particular increment (*e.g.*, $.01, $.02, $.03, etc.).

Also, relative to Item 13, for each spread, the Exchange will provide the percentage of contracts in orders of fewer than 50 contracts submitted to the CUBE Auction where the contra-side was: (a) The ATP Holder that submitted the order to the CUBE Auction; (b) market makers assigned to the class; (c) other Exchange Participants; (d) Customers; (e) Professional Customers and (f) unrelated orders. For each spread, also specify the percentage of contracts in orders of 50 contracts or greater submitted to the CUBE Auction where the contra-side was: (a) The ATP Holder that submitted the order to the CUBE Auction; (b) market makers assigned to the class; (c) other Exchange Participants; (d) Customers; (e) Professional Customers and (f) unrelated orders.

Further, the Exchange will provide, for the first and third Wednesday of each month, the: (a) Total number of CUBE Auctions on that date; (b) number of CUBE Auctions where the order submitted to the CUBE Auction was fewer than 50 contracts; (c) number of CUBE Auctions where the order submitted to the CUBE Auction was 50 contracts or greater; (d) number of CUBE Auctions (where the order submitted to the CUBE Auction was fewer than 50 contracts and where the order submitted was 50 contracts or greater) where the number of Participants (excluding the Contra Order) was zero, one, two, three, four, etc.

The Exchange will also provide: The percentage of all Exchange trades effected through the CUBE Auction in which the Initiating Participant has elected to auto-match with a limit price and the percentage of such trades in which the Initiating Participant has elected to auto-match without a limit price, and the average amount of price improvement provided to the CUBE Order when the Initiating Participant has elected to auto-match with a limit price and the average without a limit price, versus the average amount of price improvement provided to the CUBE Order when the Initiating Participant has chosen a single stop price.

Finally, during the Pilot Program, the Exchange will provide information each month with respect to situations in which the CUBE Auction is terminated prematurely or a market or marketable limit order immediately executes with an initiating order before the CUBE Auction's conclusion. The following information will be provided:

(a) The number of times that the Auction concluded early upon the arrival of an unrelated quote or order that is on the same side of the market as the CUBE Order, that is marketable against any RFR Responses or the NBBO (or the BBO, for a non-routable order) at the time of arrival, and at what time such unrelated order/quote ended the Auction. Also, (i) the number of times such orders were entered by the same (or affiliated) firm that initiated the CUBE Auction that was concluded early, and (ii) the number of times such orders were entered by a firm (or an affiliate of such firm) that participated in the execution of the CUBE Order;

(b) For the orders addressed in each of (a)(i) and (a)(ii) above, the percentage of CUBE Auctions that concluded early due to the receipt, during the CUBE Auction, of an unrelated quote or order on the same side of the market as the CUBE Order, that is marketable against any RFR Responses or the NBBO (or the BBO, for a non-routable order) at the time of arrival; and the average amount of price improvement provided to the CUBE Order where the CUBE Auction is concluded early;

(c) The number of times that the Auction concluded early upon the arrival of any RFR Response that is marketable against the NBBO (or the BBO, for a non-routable order) at the time of arrival, and at what time such RFR Response ended the Auction. Also,

[53] *See* BOX IM–7140–2.

[54] *See* Rule 935NY Commentary .01 ("Rule 935NY prevents a User from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book.")

(i) the number of times such RFR Responses were entered by the same (or affiliated) firm that initiated the CUBE Auction, and (ii) the number of times such RFR Responses were entered by a firm (or an affiliate of such firm) that participated in the execution of the CUBE Order;

(d) For the orders addressed in each of (c)(i) and (c)(ii) above, the percentage of CUBE Auctions that concluded early due to the receipt, during the CUBE Auction, of any RFR Response that is marketable against the NBBO (or the BBO, for a non-routable order) at the time of arrival; and the average amount of price improvement provided to the CUBE Order where the CUBE Order is immediately executed;

(e) The number of times that the Auction concluded early due to a trading halt and at what time the trading halt ended the CUBE Auction. Of the CUBE Auctions that concluded early due to a trading halt, the number that resulted in price improvement over the CUBE Order stop price, and the average amount of price improvement provided to the CUBE Order. Further, in the Auctions that concluded early due to a trading halt, the percentage of contracts that received price improvement over the CUBE Order stop price;

(f) The number of times that the Auction concluded early upon the initiation of a new CUBE Auction in the same series and at what time the initiation of a new CUBE Auction ended the ongoing CUBE Auction.

(g) The number of times that the Auction concluded early upon the receipt of an order with either an IOC, FOK or NOW contingency and at what time the receipt of such order ended the ongoing CUBE Auction

(h) The number of times that the Auction concluded early because sufficient interest to fill an entire AON order is received during the Response Time Interval and at what time the ongoing CUBE Auction was completed; and

(i) The average amount of price improvement provided to the initiating order when the CUBE Auction is not concluded early.

Section 11(a) of the Exchange Act

Section 11(a) of the Exchange Act prohibits any member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated persons exercises discretion ("covered accounts"), unless an exception applies.[55] Section 11(a)(1) contains a number of exceptions for principal transactions by members and their associated persons. As set forth below, the Exchange believes that the proposed rules for the CUBE Auction are consistent with the requirements of Section 11(a) and the rules thereunder.

In this regard, Section 11(a)(1)(A) provides an exception from the prohibitions in Section 11(a) for dealers acting in the capacity of market makers. The Exchange believes that orders sent by on- and off-floor market makers, for covered accounts, to the proposed CUBE Auction would qualify for this exception from Section 11(a).

In addition to this market maker exception, Rule 11a2–2(T) under the Exchange Act, known as the "effect versus execute" rule, provides exchange members with an exception from Section 11(a) by permitting them, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange.[56] To comply with the "effect versus execute" rule's conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[57] (iii) may not be affiliated with the member executing the transaction on the floor, or through the facilities, of the Exchange; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.[58]

The Exchange believes that orders sent by off-floor ATP Holders, for covered accounts, to the proposed CUBE Auction would qualify for this "effect versus execute" exception from Section 11(a), as described below. In this regard, the first condition of Rule 11a2–2(T) is that orders for covered accounts be transmitted from off the exchange floor. The Exchange represents that orders for covered accounts from off-floor ATP Holders sent to the CUBE Auction would be transmitted from remote terminals that are off the Exchange floor directly to the mechanisms by electronic means.[59] In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[60]

The second condition of Rule 11a2–2(T) requires that the member not participate in the execution of its order once the order is transmitted to the floor for execution.[61] The Exchange represents that, upon submission to the CUBE Auction, an order will be executed automatically pursuant to the proposed rules set forth for the Auction. In particular, execution of an order sent to the Auction depends not on the ATP Holder entering the order, but rather on what other orders are present and the priority of those orders. Thus, at no time following the submission of an order is an ATP Holder able to acquire control or influence over the result or timing of order execution.[62]

The third condition of Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the CUBE Auction, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling

[55] 15 U.S.C. 78k(a)(1).

[56] 17 CFR 240.11a2–2(T).

[57] The member, however, may participate in clearing and settling the transaction. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

[58] 17 CFR 240.11a2–2(T).

[59] In the alternative, orders for a covered account may be sent by an off-floor ATP Holder to an unaffiliated Floor Broker for entry into the CUBE Auction mechanism. Floor Brokers, however, may not enter orders for their own covered accounts into the Auction mechanism from on the floor, or transmit such orders from on the floor to off of the floor for entry into the CUBE Auction mechanism.

[60] *See, e.g.*, Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving, among other things, the equity rules of the Boston Stock Exchange ("BSE")); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving rules governing the trading of options on The NASDAQ Options Market); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (approving the Boston Options Exchange as an options trading facility of BSE); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (approving the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System) ("1979 Release"); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (approving NYSE's Designated Order Turnaround System) ("1978 Release").

[61] The description above covers the universe of the types of ATP Holders (*i.e.*, on- and off-floor market makers, off-floor firms that are not market makers, and Floor Brokers).

[62] The Exchange notes that the Initiating Participant may not cancel or modify a CUBE Order once a CUBE Auction has started. *See* proposed Rule 971.1NY(c).

their orders after transmitting them to the exchange.[63] The Exchange represents that the CUBE Auction is designed so that no ATP Holder has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanism.

The fourth condition of Rule 11a2–2(T) requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member, nor any associated person thereof, may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract, referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[64] The Exchange recognizes that ATP Holders relying on Rule 11a2–2(T) for transactions effected through the CUBE Auction must comply with this condition of the Rule.

Implementation

The Exchange will announce the implementation date of the proposed rule change in a Trader Update to be published no later than 60 days following Commission approval. The implementation date will be no later than 60 days following publication of the Trader Update announcing Commission approval. The Exchange believes that this implementation schedule would provide ATP Holders with adequate notice of the Auction and would allow ample time for ATP Holders to prepare their systems for participation in the Auction process, if such participation is desired.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposal would provide ATP Holders and Customers with an electronic Auction mechanism equipped to electronically execute proposed crossing transactions while affording opportunities for price improvement and helping to ensure equal access to exposed orders. The Exchange believes that the Auction would promote and foster competition as it would provide more options contracts with the opportunity for price improvement. In this regard, the CUBE Auction is intended to be beneficial to investors because the Auction may result in increased liquidity available at improved prices, with competitive final pricing out of the Initiating Participant's complete control.

Moreover, the Exchange notes that because the CUBE Auction is intended to operate seamlessly with the Consolidated Book, the proposed Auction would promote just and equitable principles of trade by providing price improvement opportunities for agency orders while at the same time providing an opportunity for such agency orders to interact with orders or quotes received during the Response Time Interval, including unrelated orders. Specifically, the Exchange notes that any ATP Holder that elects to subscribe to ArcaBook, including a broker dealer, is eligible to respond to an RFR and may therefore potentially participate in the Auction. As a result, the Exchange believes that the Auction will increase the number of options orders that are provided with the opportunity to receive price improvement.

The Exchange believes that the proposed guaranteed allocation of contracts to the Contra Order removes impediments to and perfects the mechanism of a free and open market because it should encourage ATP Holders to guarantee the execution of orders they may represent on an agency basis by entering agency orders into the CUBE Auction. The Exchange notes that the proposed guarantee would also protect investors because the guaranteed allocation is subject to there being sufficient size remaining of the CUBE Order after executing against better-priced interest (thereby providing price improvement to the CUBE Order) and Customers (thereby protecting Customer interest). In addition, the CUBE Auction promotes equal access by providing any ATP Holder that elects to subscribe to ArcaBook with the opportunity to interact with orders in the CUBE Auction. In this regard, any ATP Holder can subscribe to receive the options data provided through ArcaBook. The CUBE Auction is also non-discriminatory by using a random timer for the exposure period, which period is not disclosed to any participants or Exchange staff, and is not even determined until the RFR is sent. The Exchange also believes that the proposed amendment to Rule 900.2NY to exclude Professional Customers from the definition of "Customer" for purposes of this rule is consistent with just and equitable principles of trade because it is intended to protect investors that are not broker dealers and ensure that their orders are protected regardless of whether there is an Auction.

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 is proposing the Auction as a market enhancement that should increase competition for order flow on the Exchange in a manner that would be beneficial to investors. Specifically, the Exchange believes that the CUBE Auction would provide investors seeking to effect options orders with an opportunity for increased liquidity available at improved prices, with competitive final pricing out of the Initiating Participant's complete control. The proposal is structured to offer the same enhancement to all market participants and would not impose a competitive burden on any participant. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change is pro-competitive because it would enable the Exchange to provide market participants with functionality that is similar to that of other options exchanges. The Exchange notes that not having the CUBE Auction at the

[63] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release.

[64] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish, at least annually to the person authorized to transact business for the account, a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement, which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. *See also* 1978 Release (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

Exchange places the Exchange at a competitive disadvantage vis-à-vis other exchanges that offer similar price improvement mechanisms.

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–2014–17 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–2014–17. 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 20549–1090, 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–NYSEMKT–2014–17, and should be submitted on or before April 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05179 Filed 3–10–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71650; File No. SR–BOX–2014–09]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Clerical and Non-Controversial Rule Changes

March 5, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2014, BOX Options Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make non-controversial and clerical amendments to its rules. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rules 7130 (Execution and Price/Time Priority) and 7230 (Limitation on Liability) and Interpretive Material to Rule 15010 (Order Protection) to make clerical corrections to the BOX Rulebook. Additionally, the Exchange proposes to make non-controversial amendments to Rules 7110 (Order Entry) and 8050 (Market Maker Quotations).

First, there is a numbering issue within Rule 7130 which needs to be corrected. Specifically, 7130(a)(4)(v) is incorrectly numbered and needs to be changed to 7130(a)(4)(iv). Although this numbering issue has been in place since the inception of the BOX Rulebook,[3] BOX recently became aware of it.

Second, on May 9, 2012, BOX filed a proposed rule change to amend BOX Rule 7230[4] to clarify and codify certain provisions within Rule 7230 and to establish the maximum monthly compensation amount. The changes to that filing became operative on May 9, 2012. The purpose of this filing is to correct clerical and grammatical errors that were created by that filing.

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[65] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66871 (April 27, 2012) (File No. 10–206).

[4] *See* Securities Exchange Act Release No. 66982 (May 14, 2012), 77 FR 29718 (May 18, 2012) (SR–BOX–2012–001).

Specifically, in subsection (a)(2), the Exchange would like to update the two instances of "Exchange Related Persons or Entities" to " Exchange Related Persons and/or Entities". Additionally, in subsection (c), the Exchange would like to correct the grammatical error by removing the word "any" from the last sentence. Lastly, in subsection (d), the Exchange would like to make another clerical correction by changing "Exchange Related Persons and/or Entity" to "Exchange Related Persons and/or Entities".

Third, the Interpretative Material to BOX Rule 15010 is incorrectly titled as "IM–15020–1". The Exchange would like to correct this typographical error by amending the Interpretative Material to read "IM–15010–1". Although this numbering issue has been in place since the inception of the BOX Rulebook,[5] BOX recently became aware of it.

Fourth, the Exchange is proposing to amend Rule 7110(e)(1)(i) by adding a provision to the existing order designation, Good 'Till Cancelled ("GTC").[6] Specifically, the proposal adds subsection (E) which states that orders with the GTC designation will be cancelled in the event of a corporate action that results in an adjustment to the terms of an option contract. Further, the addition of this provision is based on a filing recently submitted by the International Securities Exchange, Inc [sic] ("ISE").[7]

Last, the Exchange is proposing to remove Rule 8050(d)(3), which states that within thirty seconds of receipt of a Customer Order to buy or sell an option in an amount greater than its published quotation size, a Market Maker will execute the entire order or that portion of the order equal to its published quotation size and the bid or offer price will be revised. The Exchange believes this Rule is obsolete and no longer applicable because the BOX system is fully automated and all orders, including Customer Orders, are executed automatically and both orders execute against the full size of the Market Maker quote in compliance with Rule 602(c)(3) of Regulation NMS. Although this provision is being removed from the Exchange's Rulebook, brokers or dealers are still subject to the Thirty Second Response Obligation under Rule 602(c)(3) of Regulation NMS. The Exchange notes that the BOX system is programmed to ensure compliance with such obligation. Additionally, the removal of this provision is based on a filing recently submitted by the ISE.[8]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[9] in general, and Section 6(b)(5) of the Act,[10] in particular, [sic] that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest. The Exchange believes it is appropriate to make these non-controversial and clerical corrections to its rules so that Exchange participants and investors have a clear and accurate understanding of the meaning of the Exchange's rules. By removing obsolete rule text as well as making clerical corrections, the Exchange is eliminating any potential for confusion by simplifying the Exchange Rules, ensuring that Participants, regulators and the public can more easily navigate the Exchange's Rulebook. The additional provision to the GTC designation codifies and clarifies what happens in the event of a corporate action, and therefore, will serve to eliminate investor confusion. There is nothing new or novel with respect to this order designation and ISE has this identical provision in its rules.[11] The Exchange believes that the proposed rule change is not unfairly discriminatory because it treats all market participants equally and will not have an adverse impact on any market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

Most of the proposed rule changes are non-substantive corrections to the Exchange's rules and therefore do not implicate the competition analysis. The other proposed rule changes are based on a recent filing by the ISE.[12] As such, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

[5] *See* supra note 3.

[6] A GTC designation can be added to Limit Orders and remain in the BOX Book until the order: (A) Trades; (B) is withdrawn by the relevant responsible trader or BOX at the Options Participant's request; (C) is automatically withdrawn by the Trading Host at market close on the date specified at the time of order entry; or (D) is automatically cancelled by the Trading Host on expiration of the contract month to which the order is related. *See* Rule 7110(e)(1)(i).

[7] *See* Securities Exchange Act Release No. 71153 (December 20, 2013), 78 FR 79037 (December 27, 2013) (Notice of Filing and Immediate Effectiveness of SR–ISE–2013–67).

[8] *Id.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* ISE Rule 715(r).

[12] *See* supra note 7.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2014–09 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–BOX–2014–09. 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–BOX–2014–09 and should be submitted on or before April 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05176 Filed 3–10–14; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In The Matter Of Global Earth Energy, Inc.; Order of Suspension of Trading

March 7, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Earth Energy, Inc. ("Global Earth") because, among other things, of questions regarding the accuracy and completeness of Global Earth's representations to investors and prospective investors in Global Earth's public filings with the Commission and Global Earth's publicly-available press releases and other public statements. In particular, there are questions regarding the accuracy and completeness of Global Earth's public assertions relating to its business transactions with Hawk Manufacturing Corp. Based on Global Earth's most recent Form 10–K annual report filed for the company's fiscal year ended August 31, 2013, Global Earth is a Nevada corporation based in Wilmington, North Carolina. As of March 5, 2014, the company's common stock was quoted on OTC Link operated by OTC Markets Group, Inc. under the symbol "GLER."

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Global Earth.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Global Earth is suspended for the period from 9:30 a.m. EST on March 7, 2014, through 11:59 p.m. EDT on March 20, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–05342 Filed 3–7–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Broadcast Live Digital Corp.; Order of Suspension of Trading

March 7, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Broadcast Live Digital Corp. because of questions regarding the accuracy of publicly available information about the company's operations.

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 March 7, 2014, through 11:59 p.m. EDT on March 20, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–05341 Filed 3–7–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Suburban Minerals Corp.; Order of Suspension of Trading

March 7, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Suburban Minerals Corp. because of questions regarding the accuracy of publicly available information about the company's operations.

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 March 7, 2014, through 11:59 p.m. EDT on March 20, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–05343 Filed 3–7–14; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13897]

Maine Disaster #ME–00042 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL)

declaration for the State of Maine, dated 02/26/2014.

Incident: Major Ice and Snow Storms.

Incident Period: 12/15/2013 through 01/10/2014.

Effective Date: 02/26/2014.

EIDL Loan Application Deadline Date: 11/26/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Androscoggin; Cumberland; Hancock; Kennebec; Waldo.

Contiguous Counties:

Maine: Franklin; Knox; Lincoln; Oxford; Penobscot; Sagadahoc; Somerset; Washington; York.

The Interest Rates are:

	Percent
Businesses And Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for economic injury is 138970.

The State which received an EIDL Declaration # is Maine.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: February 26, 2014.

Marianne O'Brien Markowitz,

Acting Administrator.

[FR Doc. 2014–05258 Filed 3–10–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8654]

60-Day Notice of Proposed Information Collection: J–1 Visa Waiver Recommendation Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATE(S): The Department will accept comments from the public up to May 12, 2014.

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Public Notice 8654" in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: PRA_BurdenComments@state.gov*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Sydney Taylor, who may be reached at *PRA_BurdenComments@state.gov*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* J–1 Visa Waiver Recommendation Application.
- *OMB Control Number:* 1405–0135.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–3035.
- *Respondents:* J–1 visa holders applying for a waiver of the two-year foreign residence requirement.
- *Estimated Number of Respondents:* 6,087.
- *Estimated Number of Responses:* 6,087.
- *Average Time Per Response:* 1 hour.
- *Total Estimated Burden Time:* 6,087 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: Form DS–3035 is used to determine the eligibility of a J–1 visa holder for a waiver of the two-year foreign residence requirement.

Methodology: Applicants will complete the DS–3035 online at *travel.state.gov.* Applicant's information will be downloaded into a barcode, and then be immediately issued a waiver case number and further instructions. Next, applicants must print their online form with the barcode. Please note that the barcode must be printed in black and white only. After the form is completed and printed out, applicants must mail their waiver application and fee payment to: U.S. Department of State, Waiver Review Division, P.O. Box 952136, St. Louis, MO 63101–2137.

Dated: February 26, 2014.

Edward Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2014–05235 Filed 3–10–14; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8655]

60-Day Notice of Proposed Information Collection: Birth Affidavit

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *May 12, 2014.*

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Public Notice 8655" in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: PPTFormsOfficer@state.gov.*
- *Mail:* PPT Forms Officer, U.S. Department of State, 2201 C Street NW., Washington, DC 20520
- *Fax:* (202) 485–6496 (include a cover sheet addressed to "PPT Forms Officer" referencing the DS form number, information collection title, and OMB control number)
- *Hand Delivery or Courier:* PPT Forms Officer, U.S. Department of State, 2201 C Street NW., Washington, DC 20520

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, 2201 C Street NW., Washington, DC 20520, who may be reached on (202) 485–6373 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Birth Affidavit.
- *OMB Control Number:* 1405–0132.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/S/PMO/PC).
- *Form Number:* DS–10.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 21,585 per year.
- *Estimated Number of Responses:* 21,585 per year.
- *Average Time per Response:* 40 minutes or 0.667 hour.
- *Total Estimated Burden Time:* 14,390 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The Birth Affidavit is submitted in conjunction with an application for a U.S. passport, and is used by Passport Services to collect information for the purpose of establishing the U.S. nationality of a passport applicant who has not submitted an acceptable United States birth certificate with his/her passport application. The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a et seq, 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966). Pursuant to 22 CFR 51.2, only U.S. nationals may be issued a U.S. passport. Most passport applicants show U.S. nationality by providing a birth certificate showing the applicant was born in the United States. Some applicants, however, may have been born in the United States, but were never issued a birth certificate. Form DS–10 is a form affidavit for completion by a witness to the birth of such an applicant; it collects information relevant to establishing the identity of the affiant, and the birth circumstances of the passport applicant. If credible, the affidavit may permit the applicant to show U.S. nationality based on the applicant's birth in the United States, despite having never been issued a U.S. birth certificate. We use the information collected on the person completing the affidavit to confirm that individual's identity, which is relevant to confirming his or her relationship to the applicant and the likelihood that the affiant has actual knowledge of the circumstances of the applicant's birth.

Methodology: When needed, a Birth Affidavit is completed at the time a U.S. citizen applies for a U.S. passport.

Dated: February 26, 2014.

Brenda Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2014–05239 Filed 3–10–14; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8653]

60-Day Notice of Proposed Information Collection: Medical Examination for Immigrant or Refugee Applicant

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *May 12, 2014.*

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Public Notice 8653" in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: PRA_BurdenComments@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Sydney Taylor at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Medical Examination for Immigrant or Refugee Applicant.
- *OMB Control Number:* 1405–0113.

- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* Forms DS–2053, DS–2054, DS–3024, DS–3030, DS–3025, DS–3026.
- *Respondents:* Immigrant or Refugee Applicant.
- *Estimated Number of Respondents:* 660,000.
- *Estimated Number of Responses:* 660,000.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 660,000.
- *Frequency:* Once Per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

Forms for this collection are completed by panel physicians for refugees and aliens seeking immigrant visas to the U.S. The collection records medical information necessary to determine whether refugees or immigrant visa applicants have medical conditions affecting the public health and requiring treatment.

Methodology: A panel physician, contracted by the consular post in accordance with instructions issued by the Centers for Disease Control (CDC), performs the medical examination of the applicant and completes the forms. The CDC also provides panel physicians with technical instructions (TIs) for completing the form. Panel physicians follow either the 1991 version or the 2007 version of the TIs. Forms DS–2053 and DS–3024 correspond with the 1991 TIs; Form DS–2054 and Form DS–3030 correspond with the 2007 TIs. Forms DS–3025 and DS–3026 correspond with both sets of TIs. Upon completing the applicant's medical examination, the examining panel physician submits a report to the consular officer on Form DS–2053 or DS–2054.

Dated: February 27, 2014.

Edward Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2014–05289 Filed 3–10–14; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS414]

WTO Dispute Settlement Proceeding Regarding China—Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel From the United States—Recourse by the United States to Article 21.5 of the DSU

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on February 13, 2014, the United States requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* with the People's Republic of China ("China") concerning China's continuing imposition of anti-dumping and countervailing duties on grain oriented flat-rolled electrical steel from the United States. That request may be found at *www.wto.org* in a document designated as WT/DS414/16. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 31, 2014, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov*, docket number USTR–2014–0006.

If you are unable to provide submissions at *www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Joseph H. Rieras, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b)(1) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a World Trade Organization ("WTO") dispute settlement panel. Pursuant to this provision, USTR is providing notice that the United States has requested a panel pursuant to Article 21.5 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). Once it is established, the panel will hold its meeting in Geneva, Switzerland, and could issue a report on its findings within nine months after its establishment.

Major Issues Raised by the United States

On November 16, 2012, the WTO Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute China—Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States ("China—GOES") (DS414). The DSB found that China imposed antidumping and countervailing duties on U.S. exports of grain oriented flat-rolled electrical steel ("GOES") in a manner that breached China's obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement") and the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"). The DSB recommended that China bring its measures into conformity with its obligations under these Agreements.

On November 30, 2012, China announced its intention to implement the DSB's recommendations and rulings in this dispute and stated that it would need a reasonable period of time in which to do so. On May 3, 2013, the arbitrator appointed under Article 21.3(c) of the DSU issued an Award providing China eight months and 15 days to implement the DSB's recommendations and rulings, expiring on July 31, 2013. On July 31, 2013, China issued a re-determination in relation to the duties at issue in this dispute, as set forth in China's Ministry of Commerce (MOFCOM) Public Notice [2013] No. 51, including its annexes. This re-determination continues the imposition of antidumping and

countervailing duties on imports of GOES from the United States.

The United States considers that China has failed to bring its measures into conformity with the covered agreements. As there is "disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB, the United States is seeking recourse to Article 21.5 of the DSU. Specifically, the United States considers that China's measures continuing to impose antidumping and countervailing duties on GOES from the United States, as set forth in MOFCOM Public Notice [2013] No. 51, including its annexes, and in MOFCOM Public Notice No. 21 [2010], including its annexes, are inconsistent with Articles 1, 3.1, 3.2, 3.4, 3.5, 6.9, 12.2, and 12.2.2 of the AD Agreement; Articles 10, 12.8, 15.1, 15.2, 15.4, 15.5, 22.3, and 22.5 of the SCM Agreement; and Article VI of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994").

Although the parties agreed that consultations were not required under the DSU, on January 13, 2014, the United States requested consultations with China consistent with the parties' understanding on procedures under Articles 21 and 22 of the DSU. That request may be found at www.wto.org contained in a document designated as WT/DS414/15.

The United States and China held consultations on January 24, 2014, but the consultations did not resolve the matter.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2014–0006. If you are unable to provide submissions at *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2014–0006 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Comment Now!" (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use Regulations.gov Site" on the bottom of the page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a "Type Comments" field, or by attaching a document using an "Upload File" field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comments"field.

A person requesting that information contained in a comment that he/she submitted be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with Section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE"

at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov,* docket number USTR–2014–0006.

The public file will include non-confidential comments received by USTR from the public with respect to the dispute. The following documents will be made available to the public at *www.ustr.gov:* the U.S. submissions, any non-confidential summaries or submissions received from other participants in the dispute. The report of the panel in this proceeding, and, if applicable, the report of the Appellate Body, will be available on the Web site of the WTO, at *www.wto.org.* Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Juan Millan,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2014–05255 Filed 3–10–14; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Harris Aircraft Services, Inc. for Commuter Air Carrier Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2014–3–2); Docket DOT–OST–2013–0089.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Harris Aircraft Services, Inc., fit, willing, and able, and awarding it commuter air carrier authority to conduct scheduled commuter service.

DATES: Persons wishing to file objections should do so no later than March 18, 2014.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2013–0089 and addressed to Docket Operations, (M–30, Room W12–140), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, Air Carrier Fitness Division (X–56, Room W86–471), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–4834.

Dated: March 4, 2014.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2014–05204 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Order Limiting Scheduled Operations at John F. Kennedy International Airport, LaGuardia Airport and Newark Liberty International Airport; High Density Rule at Reagan National Airport

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of limited waiver of the slot usage requirement.

SUMMARY: This action announces a limited waiver of the requirements to use slots at Washington's Reagan National Airport and Operating Authorizations (slots) at John F. Kennedy International Airport, LaGuardia Airport, and Newark Liberty International Airport. This policy is effective on selected dates from January 5, 2014, through March 3, 2014.

DATES: *Effective Date:* March 6, 2014.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Senior Attorney, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenues SW., Washington, DC 20591; telephone number 202–267–3134.

SUPPLEMENTARY INFORMATION:

Background

Recent weather in the East Coast has severely disrupted aviation and other modes of transportation. Multiple storms have resulted in substantial amounts of snow and ice in widespread areas and resulted in airport closures, reduced airport capacity due to snow removal from runways and taxiways, and aircraft deicing programs. Carriers responded by cancelling flights and FAA used traffic management programs as needed to reroute traffic and utilize available airspace and airport capacity. Carriers instituted network operational recovery plans during this time including proactive flight cancellations in advance of the most severe weather to position aircraft and crews needed to resume scheduled operations.

The disruption to the National Airspace System caused by snowstorms and adverse weather forced the cancellation of many flights as carriers made decisions based on safety and other operational criteria. However, the flight disruptions were not limited to the slot controlled airports. Operations at other airports were likewise impacted, including severe winter weather events in the mid-west and southern areas of the U.S. Recovery of normal operations took several days after the initial storms and was exacerbated by subsequent snow storms and other adverse conditions.

Under the FAA's High Density Rule at Washington's Reagan National Airport and orders limiting scheduled operations at the Kennedy International Airport, LaGuardia Airport, and Newark Liberty International Airport, slots must be used at least 80 percent of the time. Slots not meeting the minimum usage rules will be withdrawn or not receive historic precedence for the following scheduling season, depending on the airport. The FAA may grant a waiver from the minimum usage requirements for highly unusual and unpredictable conditions that are beyond the control of the carrier and affect carrier operations for a period of five consecutive days or more.

American Airlines, Inc., Delta Air Lines, Inc., United Airlines, Inc., and US Airways, Inc. individually requested waivers from the minimum slot usage rules at the airports for January 5, 6, 7, 21, and 22 and February 3, 4, 5, 12, 13 and 14. Each carrier stated there was significant disruption to its planned scheduled due to weather on those days. The carriers indicated that they expected to meet the minimum usage requirement and that the higher than normal level of flight cancellations was highly unusual and beyond their control. Other carriers at the airports have advised the FAA that they intend to seek similar relief for some or all of the same dates.

Statement of Policy

The FAA has determined that the facts described above met the criteria for a limited waiver of the minimum slot usage requirement. The operational disruptions impacted many carriers and the FAA has determined that a general waiver of the usage policy is warranted in these circumstances rather than individual carrier relief. The FAA will treat as used, any slot or Operating Authorization held by a carrier on January 5, 6, 7, 21, and 22, 2014; February 3, 4, 5, 12, 13, and 14, 2014; and March 2 and 3, 2014. The FAA does not intend to routinely grant general waivers to the usage requirements. Rules allow for up to 20 percent nonuse, including planned and unplanned cancellations. This is expected to accommodate routine weather and other cancellations under all but the most unusual circumstances.

Issued in Washington, DC on March 6, 2014.

Mark Bury,

Assistant Chief Counsel for International Law, Legislation and Regulations Division.

[FR Doc. 2014–05191 Filed 3–6–14; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0028; Notice 1]

Toyota Motor Engineering & Manufacturing North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Toyota Motor Engineering & Manufacturing North America, Inc., on behalf of Toyota Motor Corporation and certain Toyota manufacturing entities (collectively referred to as "Toyota") have determined that specific model year (MY) 2013–2014 Toyota vehicles do not fully comply with paragraph S4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 302, *Flammability of Interior Materials.* Toyota has filed an appropriate report dated January 29, 2014 as amended on February 20, 2014 pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is April 10, 2014.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online

instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. Toyota's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Toyota submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Toyota's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Affected are approximately 206,271 MY 2012–14 Camry, Avalon, Corolla, Sienna, Tundra, and Tacoma model Toyota vehicles. Refer to the amended report that Toyota filed pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* that Toyota included as attachment to its petition for identification of the associated Toyota manufacturing entities as well as the vehicles involved.

III. Noncompliance: Toyota explains that the noncompliance is that the front and rear seat cushions and front and rear seat backs in the subject vehicles fail to fully meet the requirements of paragraph S4 of FMVSS No. 302 because seat cushion and seat back components, when tested separately, failed to meet the burn rate requirements of paragraph S4.3. Toyota identified the noncompliant components as seat heater assemblies. Toyota also states that all other components of the seat required to meet FMVSS No. 302 are in compliance with the standard.

IV. Rule Text: Paragraph S4 of FMVSS No. 302 requires in pertinent part:

S4.1 The portions described in S4.2 of the following components of vehicle occupant compartments shall meet the requirements of S4.3: seat cushions, seat backs, seat belts, headlining, convertible tops, arm rests, all trim panels including door, front, rear, and side panels, compartment shelves, head restraints, floor coverings, sun visors, curtains, shades, wheel housing covers, engine compartment covers, mattress covers, and any other interior materials, including padding and crash-deployed elements, that are designed to absorb energy on contact by occupants in the event of a crash . . .

S4.2 Any portion of a single or composite material which is within 13 mm of the occupant compartment air space shall meet the requirements of S4.3.

S4.2.1 Any material that does not adhere to other material(s) at every point of contact shall meet the requirements of S4.3 when tested separately . . .

S4.3 (a)When tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 102 mm per minute. The requirement concerning transmission of a flame front shall not apply to a surface created by cutting a test specimen for purposes of testing pursuant to S5.

(b) If a material stops burning before it has burned for 60 seconds from the start of timing, and has not burned more than 51 mm from the point where the timing was started, it shall be considered to meet the burn-rate requirement of S4.3(a).

V. Summary of Toyota's Analyses: Toyota stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. Toyota believes that its testing shows that the seat heater assemblies comply with FMVSS No. 302 when tested as a "composite" as installed in the vehicle, i.e., along with the surrounding FMVSS No. 302 compliant seat cover, plus pad, and foam pad.

2. Toyota believes that its testing and design review of the seat heater assemblies indicates that the chance of fire or flame induced by a malfunctioning seat heater is essentially zero.

3. Toyota believes that the purpose of FMVSS No. 302 is to ". . . reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes." [1] The noncompliant seat heater assemblies would normally not be exposed to open flame or an ignition source (like matches or cigarettes) in its installed application, because it is installed within and surrounded by complying materials that meet FMVSS No. 302.

4. The seat heater assembly is a very small portion of the overall mass of the soft material portions comprising the entire seat assembly (i.e. less than 1%), and is significantly less in relation to the entire vehicle interior surface area that could potentially be exposed to flame. Therefore, Toyota believes that it would have an insignificant adverse effect on interior material burn rate and the potential for occupant injury due to interior fire.

5. Toyota is not aware of any data suggesting that fires have occurred in the field due to the installation of the non-complying seat heater assemblies.

6. Toyota also expressed its belief that in similar situations NHTSA has granted petitions for inconsequential noncompliance relating to FMVSS No. 302 requirements.

Toyota has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 302.

In summation, Toyota believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt Toyota from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Toyota no longer controlled at the time it

[1] Paragraph S2 of FMVSS No. 302 Flammability of Interior Materials.

determined that the noncompliance existed. However, any decision on this petition does not relieve Toyota distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicles under their control after Toyota notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2014–05186 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0135; Notice 1]

General Motors, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: General Motors, LLC (GM) has determined that certain model year (MY) 2013–2014 Chevrolet Express, GMC Savana, Chevrolet Silverado HD and GMC Sierra HD compressed natural gas (CNG) multipurpose passenger vehicles (MPVs) and trucks manufactured between May 20, 2012, and September 25, 2013, do not fully comply with paragraph S5.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. FMVSS 303, *Fuel System Integrity of Compressed Natural Gas Vehicles.* GM has filed an appropriate report dated November 25, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is April 10, 2014.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. GM's Petition

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), GM submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of GM's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved

Affected are approximately 2,247 MY 2013–2014 Chevrolet Express, GMC Savana, Chevrolet Silverado HD and GMC Sierra HD compressed natural gas (CNG) MPVs and trucks manufactured between May 20, 2012, and September 25, 2013.

III. Noncompliance

GM explains that the noncompliance is an error on the vehicles CNG labels. Specifically, the lettering height on the labels is 2.5 mm instead of the minimum 4.76 mm as required by paragraph S5.3 of FMVSS No. 303.

IV. Rule Text

Paragraph S5.3 of FMVSS No. 303 requires:

S5.3 Each CNG vehicle shall be permanently labeled, near the vehicle refueling connection, with the information specified in S5.3.1 and S5.3.2 of this section. The information shall be visible to a person standing next to the vehicle during refueling, in English, and in letters and numbers that are not less than 4.76 mm (3/16 inch) high.

S5.3.1 The statement: "Service pressure ____kPa (____psig)."

S5.3.2 The statement "See instructions on fuel container for inspection and service life."

V. Summary of GM's Analyses

GM stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

A. The information on the subject CNG labels is correct and entirely legible.

Paragraph S5.4 of FMVSS No. 303 requires that the information required for the label also be included in the owner's manual using ". . . not less than 10 point type." The 2.5 mm lettering height on the subject labels is 10 point type, i.e., the same lettering size as what is specified for the owner's manual content. The 10 point type that is legible for purposes of the owner's manual is also legible on the labels installed at the CNG filler port.

B. The subject CNG label is an "information" label, not a "warning" label.

The subject label is not a "warning" label and does not warn the user of a safety related risk or consequence. Even if the user does not read the label information due to the font size, the user will not miss information about a safety risk.

C. The label font size does not create a risk of misfueling.

Even if the user fails to read the information label due to the reduced font size, there would be no adverse safety consequence. The service pressure of the subject CNG tanks is 3,600 psi. There is no risk of over-pressuring these tanks since CNG filling stations are required to shutoff at 3,600 psi, per ANSI/IAS NGV 4.2–1999 CSA 12.52–M99(R09). Accordingly, there is no risk of a fuel leak.

Even if the shutoff function on a filling station were to malfunction, all CNG tanks on the affected vehicles are equipped with pressure-relief devices designed to deploy at 5,400 psi, which is below the burst pressure of the tank itself.

With regard to under-pressure (under-fill) potential, all affected vehicles are equipped with a CNG fuel gauge in the instrument cluster to inform the driver of the fuel level. While some drivers may estimate the driving range associated with a full fill, most drivers typically rely on fuel gauges, not anticipated range, to determine when to refuel. Some CNG filling stations, primarily in Canada, are designed to shutoff at 3,000 psi, which is below the 3,600 psi service pressure of the affected CNG tanks. However, regardless of whether the CNG tanks on the affected vehicles start out full (3,600 psi) or 83% full (3,000 psi), the driver has ample opportunity to monitor the fuel gauge and refuel prior to the CNG being depleted. Additionally, the owner manual instructs that "the fuel gauge has been calibrated to display full at approximately 24 800 kPa (3,600 psi) . . ."

Finally, there is no risk that a customer would attempt to fuel the CNG tanks from a conventional gasoline pump. The fueling nozzle and filling port for CNG are completely distinct from the corresponding nozzle and port used for gasoline, and the distinctions are obvious. In the extraordinary event that a user attempted to connect a conventional gasoline nozzle to the CNG fueling valve, it would be immediately apparent that the mismatched gasoline nozzle does not attach to or work with the CNG valve.

GM also asserts that owners and operators of CNG vehicles (the large majority being fleet purchasers) are well aware that their vehicles use a non-conventional fuel, and are attuned to the unique characteristics associated with CNG use, such as service pressure, and tank inspection and replacement provisions. These aspects of the CNG fuel system are likely known to owners when or even before they purchase the CNG vehicle, and in any event are easily obtained for the subject vehicles from the labels at the fueling port, from the vehicle owner's manuals, and/or from the labels on the CNG tanks themselves. As mentioned above, the information is provided in the owner's manual.

In addition, GM stated its belief that NHTSA has previously granted petitions for labeling related inconsequential noncompliances that GM believes can be applied to a decision on its petition.

GM informed NHTSA that it is not aware of any crashes, injuries or customer complaints associated with this condition.

GM also informed NHTSA that it has corrected the noncompliance for all future production.

In summation, GM believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject noncompliant vehicles that GM no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve motor vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicles under their control after GM notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2014–05185 Filed 3–10–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Publication of Iran General License D–1

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice, publication of general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is publishing General License D–1 issued under the Iranian transactions sanctions program on February 7, 2014. General License D–1 authorizes the exportation, reexportation, or provision to Iran of certain services, software, and hardware incident to personal communications, subject to certain limitations, as well as the importation into the United States of certain software and hardware previously exported to Iran.

DATES: *Effective Date:* February 7, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–6746, Assistant Director for Regulatory Affairs, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On May 30, 2013, OFAC issued General License D under the Iranian transactions sanctions program and made General License D available on the OFAC Web site (*www.treasury.gov/ofac*). On July 19, 2013, OFAC published General License D in the **Federal Register**, 78 FR 43278.

On February 7, 2014, OFAC issued General License D–1. General License D–1 clarifies certain aspects of General License D and adds certain new authorizations relating to the exportation, reexportation, or provision to Iran of certain services, software, and hardware incident to personal communications, subject to certain limitations, as well as to the importation into the United States of certain software and hardware previously exported to Iran. Effective February 7, 2014, General License D–1 replaced and superseded in its entirety General License D. At the time of its issuance on February 7, 2014, OFAC made General

License D–1 available on the OFAC Web site (*www.treasury.gov/ofac*). With this notice, OFAC is publishing General License D–1 in the **Federal Register**.

General License D–1

General License With Respect to Certain Services, Software, and Hardware Incident to Personal Communications

(a) Effective February 7, 2014, to the extent that such transactions are not exempt from the prohibitions of the Iranian Transactions and Sanctions Regulations, 31 CFR Part 560 ("ITSR"), and subject to the restrictions set forth in paragraph (b), the following transactions are authorized:

(1) *Fee-based services.* The exportation or reexportation, directly or indirectly, from the United States or by a U.S. person, wherever located, to Iran of fee-based services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging.

(2) *Fee-based software.* (i) *Software subject to the EAR.* The exportation, reexportation, or provision, directly or indirectly, to Iran of fee-based software subject to the Export Administration Regulations, 15 CFR parts 730 through 774 (the "EAR"), that is necessary to enable services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, provided that such software is designated EAR99 or classified by the U.S. Department of Commerce on the Commerce Control List, 15 CFR part 774, supplement No. 1 ("CCL"), under export control classification number ("ECCN") 5D992.c.

(ii) *Software that is not subject to the EAR because it is of foreign origin and is located outside the United States.* The exportation, reexportation, or provision, directly or indirectly, by a U.S. person, wherever located, to Iran of fee-based software that is not subject to the EAR because it is of foreign origin and is located outside the United States that is necessary to enable services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, provided that such software would be designated EAR99 if it were located in the United States or would meet the criteria for classification under ECCN 5D992.c if it were subject to the EAR.

Note to Paragraphs (a)(1) and (a)(2): See 31 CFR 560.540 for authorizations relating to the exportation to persons in Iran of no-cost services incident to the exchange of personal communications over the Internet and no-cost software necessary to enable such services.

(3) *Additional Software, Hardware, and Related Services.* To the extent not authorized by paragraph (a)(1) or (a)(2), the exportation, reexportation, or provision, directly or indirectly, to Iran of certain software and hardware incident to personal communications, as well as related services, as follows:

(i) in the case of hardware and software subject to the EAR, the items specified in the Annex to this general license;

(ii) in the case of hardware and software that is not subject to the EAR because it is of foreign origin and is located outside the United States that is exported, reexported, or provided, directly or indirectly, by a U.S. person, wherever located, hardware and software that is of a type described in the Annex to this general license provided that it would be designated EAR99 if it were located in the United States or would meet the criteria for classification under the relevant ECCN specified in the Annex to this general license if it were subject to the EAR; and

(iii) in the case of software not subject to the EAR because it is described in 15 CFR 734.3(b)(3) that is exported, reexported, or provided, directly or indirectly, from the United States or by a U.S. person, wherever located, software that is of a type described in the Annex to this general license.[1]

Note to Paragraphs (a)(2) and (a)(3): The authorizations in paragraphs (a)(2) and (a)(3) include the exportation, reexportation, or provision, directly or indirectly, to Iran of authorized hardware and software by an individual leaving the United States for Iran.

(4) *Internet connectivity services and telecommunications capacity.* The exportation or reexportation, directly or indirectly, from the United States or by a U.S. person, wherever located, to Iran of consumer-grade Internet connectivity services and the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) incident to personal communications.

Note to Paragraph (a)(4): See 31 CFR 560.508 for authorizations relating to transactions with respect to the receipt and transmission of telecommunications involving Iran.

(5) *Importation into the United States of hardware and software previously exported to Iran.* The importation into the United States of hardware and software authorized for exportation, reexportation, or provision to Iran under 31 CFR 560.540(a) or paragraphs (a)(2) and (a)(3) of this general license by an individual entering the United States, directly or indirectly, from Iran, provided that the items previously were exported, reexported, or provided by the individual to Iran pursuant to 31 CFR 560.540(a) or paragraphs (a)(2) and (a)(3) of this general license.

(6) *Publicly available,*[2] *no cost services and software to the Government of Iran.*[3] *(i) Services.* The exportation or reexportation, directly or indirectly, from the United States or by a U.S. person, wherever located, to the Government of Iran of services described in 31 CFR 560.540(a)(1) or categories (6) through (11) of the Annex to this general license, provided that such services are publicly available at no cost to the user. *(ii) Software.* The exportation, reexportation, or provision, directly or indirectly, to the Government of Iran of software described in 31 CFR 560.540(a)(2) or categories (6) through (11) of the Annex to this general license, read in conjunction with paragraph (a)(3) of this general license, provided that such software is publicly available at no cost to the user.

Note 1 to Paragraph (a): In sub-paragraph (a)(6), the term "publicly available" refers generally to software that is widely available to the public. Sub-paragraph (a)(3)(iii) refers to software that is described in 15 CFR 734.3(b)(3), which defines "publicly available" software for purposes of the EAR. The scope of the term "publicly available" in paragraph (a)(6) of this general license thus differs from the scope of the Department of Commerce's regulation at 15 CFR 734.3(b)(3) as referenced in subparagraph (a)(3)(iii) of this general license.

Note 2 to Paragraph (a): The authorizations of U.S. persons set forth in paragraph (a) extend to entities owned or controlled by a U.S. person and established or maintained outside the United States ("U.S.-owned or -controlled foreign entities"), subject to the conditions set forth in 31 CFR 560.556.

Note 3 to Paragraph (a): Nothing in this general license relieves the exporter from compliance with the export license application requirements of another Federal agency.

[1] See Note 1 to paragraph (a).

[2] See Note 1 to paragraph (a).

[3] See 31 CFR 560.304.

(b) This general license does not authorize:

(1) The exportation, reexportation, or provision, directly or indirectly, of the services, software, or hardware specified in paragraph (a) with knowledge or reason to know that such services, software, or hardware are intended for the Government of Iran, except for services or software specified in paragraph (a)(6).

(2) The exportation, reexportation, or provision, directly or indirectly, of the services, software, or hardware specified in paragraph (a) to any person whose property and interests in property are blocked pursuant to any part of 31 CFR chapter V, other than persons whose property and interests in property are blocked solely pursuant to Executive Order 13599 as the Government of Iran.

(3) The exportation or reexportation, directly or indirectly, of commercial-grade Internet connectivity services or telecommunications transmission facilities (such as dedicated satellite links or dedicated lines that include quality of service guarantees).

(4) The exportation or reexportation, directly or indirectly, of web-hosting services that are for commercial endeavors or of domain name registration services.

(5) Any transaction by a U.S.-owned or -controlled foreign entity otherwise prohibited by 31 CFR 560.215 if the transaction would be prohibited by any other part of chapter V if engaged in by a U.S. person or in the United States.

(6) Any action or activity involving any item (including information) subject to the EAR that is prohibited by, or otherwise requires a license under, part 744 of the EAR or participation in any transaction involving a person whose export privileges have been denied pursuant to part 764 or 766 of the EAR, without authorization from the Department of Commerce.

(c) Effective February 7, 2014, transfers of funds from Iran or for or on behalf of a person in Iran in furtherance of an underlying transaction authorized by paragraph (a) may be processed by U.S. depository institutions and U.S. registered brokers or dealers in securities so long as they are consistent with 31 CFR 560.516.[4]

(d) Specific licenses may be issued on a case-by-case basis for the exportation, reexportation, or provision of services, software, or hardware incident to personal communications not specified in paragraph (a) or the Annex to this general license.

(e) Effective February 7, 2014, GL D–1 replaces and supersedes in its entirety GL D, dated May 30, 2013.

Annex—Services, Software, and Hardware Incident to Personal Communications Authorized for Exportation, Reexportation, or Provision to Iran by Paragraph (a)(3) of ITSR General License D–1

Note: See paragraph (a)(3)(ii)–(iii) of General License D–1 for authorizations related to certain hardware and software that is of a type described below but that is not subject to the EAR.

1. Mobile phones (including but not limited to smartphones), Personal Digital Assistants (PDAs), Subscriber Identity Module (SIM) cards, and accessories for such devices designated EAR99 or classified on the CCL under ECCN 5A992.c; drivers and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.

2. Satellite phones and Broadband Global Area Network (BGAN) hardware designated EAR99 or classified under ECCN 5A992.c; demand drivers and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.

3. Consumer * modems, network interface cards, radio equipment (including antennae), routers, switches, and WiFi access points, designed for 50 or fewer concurrent users, designated EAR99 or classified under ECCNs 5A992.c, 5A991.b.2, or 5A991.b.4; drivers, communications, and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.

4. Residential consumer* satellite terminals, transceiver equipment (including but not limited to antennae, receivers, set-top boxes and video decoders) designated EAR99 or classified under ECCNs 5A992.c, 5A991.b.2, or 5A991.b.4; drivers, communications, and connectivity software for such hardware designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.

5. Laptops, tablets, and personal computing devices, and peripherals for such devices (including but not limited to consumer* disk drives and other data storage devices) and accessories for such devices (including but not limited to keyboards and mice) designated EAR99 or classified on the CCL under ECCNs 5A992.c, 5A991.b.2, 5A991.b.4, or 4A994.b; computer operating systems and software required for effective consumer use of such hardware, including software updates and patches, designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such hardware and software.

6. Anti-virus and anti-malware software designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.

7. Anti-tracking software designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.

8. Mobile operating systems, online application for mobile operating systems (app) stores, and related software, including apps designed to run on mobile operating systems, designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.

9. Anti-censorship tools and related software designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.

10.Virtual Private Network (VPN) client software, proxy tools, and fee-based client personal communications tools including voice, text, video, voice-over-IP telephony, video chat, and successor technologies, and communications and connectivity software required for effective consumer use designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.

11. Provisioning and verification software for Secure Sockets Layers (SSL) certificates designated EAR99 or classified under ECCN 5D992.c; and services necessary for the operation of such software.

Issued: February 7, 2014.

[4] This general license does not authorize any transaction prohibited by any part of chapter V of 31 CFR other than part 560. Accordingly, the transfer of funds may not be by, to, or through any of the following: (1) A person whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544, or the Global Terrorism Sanctions Regulations, 31 CFR part 594; or (2) a person whose property and interests in property are blocked pursuant to any other part of 31 CFR chapter V, or any Executive order, except an Iranian financial institution whose property and interests in property are blocked solely pursuant to 31 CFR part 560.

* For purposes of this Annex, the term "consumer" refers to items that are: (1) Generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following: (a) Over-the-counter transactions; (b) mail order transactions; (c) electronic transactions; or (d) telephone call transactions; and (2) designed for installation by the user without further substantial support by the supplier.

Dated: March 5, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2014–05210 Filed 3–10–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to methods to determine taxable income in connection with a cost sharing arrangement.

DATES: Written comments should be received on or before May 12, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to, Christie A. Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Gerald J. Shields, LL.M. at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Methods to Determine Taxable Income in Connection with a Cost Sharing Arrangement.

OMB Number: 1545–1364.

Regulation Project Number: REG–144615–02 (T.D. 9441).

Abstract: The collection of information related to the IRS's assessment of whether a cost sharing arrangement is valid, and whether each participant's share of costs is proportionate to the participants share of benefits, and whether arm's length compensation has been paid to those participants providing external contributions such that an appropriate return is provided to those participants for putting their funds at risk to a greater extent than the other participants.

This document contains temporary regulations that provide further guidance and clarification regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement in order to address issues that have arisen in administering the current regulations. The temporary regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the temporary regulations. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in the issue of the **Federal Register** dated January 5, 2009, (74 FR 340).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 9,350.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2014.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–05256 Filed 3–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 8994]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation relating to electing small business trusts.

DATES: Written comments should be received on or before May 12, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Gerald J. Shields, LL.M. at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Electing Small Business Trusts.

OMB Number: 1545–1591.

Regulation Project Number: REG–251701–96 (TD 8894).

Abstract: This regulation provide the rules for an electing small business trust (ESBT), which is a permitted shareholder of an S corporation. With respect to the collections of information, the regulations provide the rules for making an ESBT election, and the rules for converting from a qualified subchapter S trust (QSST) to an ESBT and the conversion of an ESBT to a QSST. The regulations allow certain S corporations to reinstate their previous taxable year that was terminated under Sec. 1.444–2T by filing Form 8716.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 7,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 20, 2014.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–05254 Filed 3–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning, Environmental Settlement Funds—Classification.

DATES: Written comments should be received on or before May 12, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Kerry Dennis, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the Internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Environmental Settlement Funds—Classification.

OMB Number: 1545–1465. *Regulation Project Number:* T.D. 8668.

Abstract: This regulation provides guidance to taxpayers on the proper classification of trusts formed to collect and disburse amounts for environmental remediation of an existing waste site to discharge taxpayers' liability or potential liability under applicable environmental laws. Section 301.7701–4(e)(3) of the regulation provides that the trustee of an environmental remediation trust must furnish to each grantor a statement that shows all items of income, deduction, and credit of the trust for the taxable year attributable to the portion of the trust treated as owned by the grantor. The statement must provide the grantor with the information necessary to take the items into account in computing the grantor's taxable income.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 4 minutes.

Estimated Total Annual Burden Hours: 2000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–05237 Filed 3–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 637

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 637, Application for Registration (For Certain Excise Tax Activities).

DATES: Written comments should be received on or before May 12, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Gerald J. Shields at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Registration (For Certain Excise Tax Activities).

OMB Number: 1545–0014.

Form Number: Form 637.

Abstract: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Revenue code section 4101 for purposes of the federal excise tax on taxable fuel imposed under Code sections 4041 and 4071; and to certain manufacturers or sellers and purchasers that must register under Code section 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Taxable fuel producers are required by Code section 4101 to register with the Service before incurring any tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions, and farms.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 13 hr., 31 min.

Estimated Total Annual Burden Hours: 27,020

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2014.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–05246 Filed 3–10–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection (VA National Veterans Sports Programs and Special Event Surveys Data Collection) Activity Under OMB Review

AGENCY: Office of Public & Intergovernmental Affairs, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Public Affairs (OPA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 10, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–NEW, VA National Veterans Sports Programs and Special Event Surveys" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to "OMB Control No. 2900–NEW" (VA National Veterans Sports Programs and Special Event Surveys)

SUPPLEMENTARY INFORMATION:

Title: VA National Veterans Sports Programs and Special Event Surveys.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: The Department of Veterans Affairs (VA) administers National Rehabilitation Special Events for Veterans who are receiving care at VA medical facilities. Each event promotes the healing of body and spirit by motivating Veterans to reach their full potential, improve their independence, and achieve a healthier lifestyle and higher quality of life. Surveys are designed to allow program improvement and measure the tangible, quantifiable benefits of the events using event applications. Information collection is used for the planning, distribution and utilization of resources and to allocate clinical and administrative support to patient treatment services.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 20, 2013, pages 77204–77205.

Affected Public: Individuals or households.

Estimated Annual Burden: 2782 burden hours.

Estimated Average Burden per Respondent: 2.552 minutes.

Frequency of Response: 28.75 (annual).

Estimated Number of Respondents: 2275.

Dated: March 6, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–05203 Filed 3–10–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Tuesday,
No. 47 March 11, 2014

Part II

Department of Health and Human Services

45 CFR Parts 144, 147, 153, et al.
Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2015; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 147, 153, 155, 156 and 158

[CMS–9954–F]

RIN 0938–AR89

Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2015

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth payment parameters and oversight provisions related to the risk adjustment, reinsurance, and risk corridors programs; cost sharing parameters and cost-sharing reductions; and user fees for Federally-facilitated Exchanges. It also provides additional standards with respect to composite premiums, privacy and security of personally identifiable information, the annual open enrollment period for 2015, the actuarial value calculator, the annual limitation in cost sharing for stand-alone dental plans, the meaningful difference standard for qualified health plans offered through a Federally-facilitated Exchange, patient safety standards for issuers of qualified health plans, and the Small Business Health Options Program.

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

FOR FURTHER INFORMATION CONTACT:

For general information: Sharon Arnold, (301) 492–4286; Laurie McWright, (301) 492–4311; or Jeff Wu, (301) 492–4305.

For matters related to student health insurance coverage and composite premiums: Jacob Ackerman, (301) 492–4179.

For matters related to the risk adjustment program: Kelly Horney, (410) 786–0558.

For general matters related to the reinsurance program: Adrianne Glasgow, (410) 786–0686.

For matters related to reinsurance contributions: Adam Shaw, (410) 786–1019.

For matters related to risk corridors: Jaya Ghildiyal, (301) 492–5149.

For matters related to medical loss ratio: Christina Pavlus, (301) 492–4172.

For matters related to cost-sharing reductions and netting of payments and charges: Pat Meisol, (410) 786–1917.

For matters related to the premium adjustment percentage: Johanna Lauer, (301) 492–4397.

For matters related to Federally-facilitated Exchange user fees: Michael Cohen, (301) 492–4277.

For matters related to the annual limitation on cost sharing for stand-alone dental plans, privacy and security of personally identifiable information, the annual open enrollment period for 2015, and the meaningful difference standard: Leigha Basini, (301) 492–4380.

For matters related to the Small Business Health Options Program: Christelle Jang, (410) 786–8438.

For matters related to the actuarial value calculator: Allison Yadsko, (410) 786–1740.

For matters related to patient safety standards for issuers of qualified health plans: Nidhi Singh Shah, (301) 492–5110.

SUPPLEMENTARY INFORMATION:

Table of Contents

Acronyms

Affordable Care Act The collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152)
AV Actuarial Value
CFR Code of Federal Regulations
CMS Centers for Medicare & Medicaid Services
EHB Essential Health Benefits
ERISA Employee Retirement Income Security Act of 1974 (Pub. L. 93–406)
FFE Federally-facilitated Exchange
FF–SHOP Federally-facilitated Small Business Health Options Program
FPL Federal poverty level
HCC Hierarchical condition category
HHS United States Department of Health and Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)
IRS Internal Revenue Service
MLR Medical Loss Ratio
OMB Office of Management and Budget
OPM United States Office of Personnel Management
PHS Act Public Health Service Act
PII Personally identifiable information
PSO Patient Safety Organization
PRA Paperwork Reduction Act of 1995
PSES Patient safety evaluation system
QHP Qualified health plan
SADP Stand-alone Dental Plan
SHOP Small Business Health Options Program
The Code Internal Revenue Code of 1986
TPA Third party administrator

I. Executive Summary

Qualified individuals and qualified employers are now able to purchase private health insurance coverage through competitive marketplaces called Affordable Insurance Exchanges, or "Exchanges" (also called Health Insurance Marketplaces, or "Marketplaces").[1] Individuals who enroll in qualified health plans (QHPs) through individual market Exchanges may be eligible to receive premium tax credits to make health insurance more affordable and reductions in cost-sharing payments to reduce out-of-pocket expenses for health care services. In 2014, HHS began operationalizing the premium stabilization programs established by the Affordable Care Act. These programs—the risk adjustment, reinsurance, and risk corridors programs—are intended to mitigate the potential impact of adverse selection and stabilize the price of health insurance in the individual and small group markets. We believe that these programs, together with other reforms of the Affordable Care Act, will make high-quality health insurance affordable and accessible to millions of Americans.

HHS has previously outlined the major provisions and parameters related to the advance payments of the premium tax credit, cost-sharing reductions, and premium stabilization programs. This rule finalizes additional provisions related to the implementation of these programs, including certain oversight provisions for the premium stabilization programs, as well as key payment parameters for the 2015 benefit year.

The HHS Notice of Benefit and Payment Parameters for 2014 final rule (78 FR 15410) (2014 Payment Notice) finalized the risk adjustment methodology that HHS will use when it operates risk adjustment on behalf of a State. This final rule establishes updates to the risk adjustment methodology for 2014 to account for certain private market Medicaid expansion alternative plans. It also establishes the counting methods for determining small group size for participation in the risk adjustment and risk corridors programs.

Using the methodology set forth in the 2014 Payment Notice, we establish a 2015 uniform reinsurance contribution rate of $44 annually per capita, and the 2015 uniform reinsurance payment parameters—a $70,000 attachment point, a $250,000 reinsurance cap, and a 50 percent coinsurance rate. We are also finalizing our proposal to decrease the attachment point for 2014 from $60,000 to $45,000. Additionally, in order to maximize the financial effect of the transitional reinsurance program, we provide that if reinsurance contributions collected for a benefit year exceed total requests for reinsurance payments for the benefit year, we will increase the coinsurance rate on our reinsurance payments for that benefit year up to 100 percent, rolling over any remaining funds for use as reinsurance payments for the subsequent benefit year.

We also finalize several provisions related to cost sharing. First, we establish a methodology, with certain modifications described below, for estimating average per capita premium and for calculating the premium adjustment percentage for 2015, which is used to set the rate of increase for several parameters detailed in the Affordable Care Act, including the maximum annual limitation on cost sharing and the maximum annual limitation on deductibles for health plans in the small group market for 2015. We are establishing the reduced maximum annual limitations on cost sharing for the 2015 benefit year for cost-sharing reduction plan variations. We are relaxing the requirement that a QHP and its plan variations have the same out-of-pocket spending for non-EHBs. We are finalizing our proposal to modify the methodology for calculating advance payments for cost-sharing reductions for the 2015 benefit year. We are also finalizing parameters for updating the AV Calculator.

For 2015, we are finalizing the FFE user fee rate of 3.5 percent of premium. Additionally, with respect to the FFE user fee adjustment set forth under the Coverage of Certain Preventive Services Under the Affordable Care Act final rule, published in the July 2, 2013 **Federal Register** (78 FR 39870) (Preventive Services Rule), we are finalizing an allowance for administrative costs and margin associated with the payment for contraceptive services. We are also finalizing proposed modifications to the risk corridors program for the 2014 benefit year.

The success of the premium stabilization programs depends on a robust oversight program. This final rule expands on the provisions of the Premium Stabilization Rule (77 FR 17220), the 2014 Payment Notice (78 FR 15410), and the first and second final Program Integrity Rules (78 FR 54070 and 78 FR 65046). We are finalizing HHS's authority to audit State-operated reinsurance programs, contributing entities, and issuers of risk adjustment covered plans and reinsurance eligible-plans. We also finalize participation standards for the risk corridors program, and outline a process for validating risk corridors data submissions and enforcing compliance with the provisions of the risk corridors program.

We also finalize several aspects of our methodology for the HHS-operated risk adjustment data validation process. On June 22, 2013, we issued "The Affordable Care Act HHS-operated Risk Adjustment Data Validation Process White Paper" [2] and on June 25, 2013, we held a public meeting to discuss how to best ensure the accuracy and consistency of the data we will use when operating the risk adjustment program on behalf of a State. In this final rule, we establish certain standards for risk adjustment data validation, including a sampling methodology for the initial validation audit and detailed audit standards. These standards will be used and evaluated for 2 years before

[1] The word "Exchanges" refers to both State Exchanges, also called State-based Exchanges, and Federally-facilitated Exchanges (FFEs). In this rule, we use the terms "State Exchange" or "FFE" when we are referring to a particular type of Exchange. When we refer to "FFEs," we are also referring to State Partnership Exchanges, which are a form of FFE.

[2] Available at: *https://www.regtap.info/uploads/library/ACA_HHS_OperatedRADVWhitePaper_062213_5CR_062213.pdf.*

they are used as a basis for payment adjustments.

This rule also includes a reduction in the time period for which a State electing to operate an Exchange after 2014 must have in effect an approved, or conditionally approved, Exchange Blueprint and operational readiness assessment from at least 12 months to 6.5 months prior to the Exchange's first effective date of coverage. We also finalize certain provisions related to the privacy and security of personally identifiable information (PII) in the Exchange, the Exchange annual open enrollment period for 2015, the annual limitation on cost sharing for stand-alone dental plans, the meaningful difference standards for QHPs offered through an FFE, the SHOP, patient safety standards for QHP issuers, and composite premiums in the small group market.

II. Background

A. Legislative and Regulatory Overview

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this rule, we refer to the two statutes collectively as the "Affordable Care Act."

Section 1201 of the Affordable Care Act added section 2701 of the Public Health Service Act (PHS Act) regarding fair health insurance premiums. Section 2701(a)(1) limits the variation in premium rates charged by a health insurance issuer for non-grandfathered health insurance coverage (including QHPs) in the individual or small group market to four factors: Family size; rating area; age; and tobacco use. Section 2701(a)(4) of the PHS Act requires that any family premium using age or tobacco rating may only apply those rates to the portion of the premium that is attributable to each family member.

Section 1302 of the Affordable Care Act directs the Secretary of Health and Human Services (referred to throughout this rule as the Secretary) to define essential health benefits (EHBs) and provides for cost-sharing limits and actuarial value (AV) requirements. Section 1302(d) of the Affordable Care Act describes the various levels of coverage based on AV. Consistent with section 1302(d)(2)(A) of the Affordable Care Act, AV is calculated based on the provision of EHB to a standard population. Section 1302(d)(3) of the Affordable Care Act directs the Secretary to develop guidelines that allow for *de minimis* variation in AV calculations.

Section 1311(b)(1)(B) of the Affordable Care Act directs that the SHOP assist qualified small employers in facilitating the enrollment of their employees in QHPs offered in the small group market. Under section 1312(f)(2)(B) of the Affordable Care Act, beginning in 2017, States will have the option to allow issuers to offer QHPs in the large group market through the SHOP.[3]

Section 1311(c)(6)(B) of the Affordable Care Act states that the Secretary is to set annual open enrollment periods for Exchanges for calendar years after the initial enrollment period.

Section 1311(h)(1) of the Affordable Care Act specifies that a QHP may contract with health care providers and hospitals with more than 50 beds only if they meet certain patient safety standards. For hospitals with more than 50 beds, this includes the use of a patient safety evaluation system and a comprehensive hospital discharge program. Section 1311(h)(2) of the Affordable Care Act also provides the Secretary flexibility to establish reasonable exceptions to these patient safety requirements, and section 1311(h)(3) of the Affordable Care Act allows the Secretary flexibility to issue regulations to modify the number of beds described in section 1311(h)(1)(A) of the Affordable Care Act.

Sections 1313 and 1321 of the Affordable Care Act provide the Secretary with the authority to oversee the financial integrity of State Exchanges, their compliance with HHS standards, and the efficient and non-discriminatory administration of State Exchange activities. Section 1321(a) of the Affordable Care Act provides general authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, QHPs, and other components of Title I of the Affordable Care Act.

When operating an FFE under section 1321(c)(1) of the Affordable Care Act, HHS has the authority under sections 1321(c)(1) and 1311(d)(5)(A) of the Affordable Care Act to collect and spend user fees. In addition, 31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. Office of Management and Budget (OMB) Circular A–25 Revised establishes Federal policy regarding user fees and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.

Section 1341 of the Affordable Care Act requires the establishment of a transitional reinsurance program in each State to help pay the cost of treating high-cost enrollees in the individual market from 2014 through 2016. Section 1342 of the Affordable Care Act directs the Secretary to establish a temporary risk corridors program that provides for the sharing in gains or losses resulting from inaccurate rate setting from 2014 through 2016 between the Federal government and certain participating health plans. Section 1343 of the Affordable Care Act establishes a permanent risk adjustment program that is intended to provide increased payments to health insurance issuers that attract higher-risk populations, such as those with chronic conditions, and thereby reduce incentives for issuers to avoid higher-risk enrollees. Sections 1402 and 1412 of the Affordable Care Act establish a program for reducing cost sharing for qualified individuals with lower household income and Indians.

Section 1411(g) of the Affordable Care Act requires that any person who receives information specified in section 1411(b) from an applicant or information specified in section 1411(c), (d), or (e) from a Federal agency must use the information only for the purpose of and to the extent necessary to ensure the efficient operation of the Exchange, and may not disclose the information to any other person except as provided in that section. Section 6103(l)(21)(C) of the Code additionally provides that return information disclosed under section 6103(l)(21)(A) or (B) may be used only for the purpose of and to the extent necessary in establishing eligibility for participation in the Exchange, verifying the appropriate amount of any premium tax credit or cost-sharing reduction, or determining eligibility for participation in a health insurance affordability program as described in that section.

Section 1560(c) of the Affordable Care Act provides that nothing in title I of the Affordable Care Act (or an amendment made by Title I of the Affordable Care Act) shall be construed to prohibit an institution of higher education (as such term is defined for purposes of the Higher Education Act of 1965) from offering a student health insurance plan, to the extent that such requirement is

[3] If a State elects this option, the rating rules in section 2701 of the PHS Act and its implementing regulations will apply to all coverage offered in such State's large group market (except for self-insured group health plans) pursuant to section 2701(a)(5) of the PHS Act.

otherwise permitted under applicable Federal, State or local law.

1. Premium Stabilization Programs

In the July 15, 2011 **Federal Register** (76 FR 41930), we published a proposed rule outlining the premium stabilization programs. We implemented the premium stabilization programs in a final rule, published in the March 23, 2012 **Federal Register** (77 FR 17220) (Premium Stabilization Rule). In the December 7, 2012 **Federal Register** (77 FR 73118) (proposed 2014 Payment Notice), we published a proposed rule outlining the benefit and payment parameters for the 2014 benefit year to expand the provisions related to the premium stabilization programs and set forth payment parameters in those programs. We published the final rule in the March 11, 2013 **Federal Register** (78 FR 153410) (2014 Payment Notice).

As discussed above, we published a white paper on risk adjustment data validation on June 22, 2013, and hosted a public meeting on June 25, 2013, to discuss the white paper.

2. Program Integrity

In the June 19, 2013 **Federal Register** (78 FR 37032), we published a proposed rule that proposed certain program integrity standards related to Exchanges and the premium stabilization programs (proposed Program Integrity Rule). The provisions of that proposed rule were finalized in two rules, the "first final Program Integrity Rule" published in the August 30, 2013 **Federal Register** (78 FR 54070) and the "second final Program Integrity Rule" published in the October 30, 2013 **Federal Register** (78 FR 65046).

3. Exchanges, Essential Health Benefits, Actuarial Value

A proposed rule relating to EHBs and AV was published in the November 26, 2012 **Federal Register** (77 FR 70644). We finalized standards related to the premium adjustment percentage and AV in the Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule, published in the February 25, 2013 **Federal Register** (78 FR 12834) (EHB Rule). We established standards for the administration and payment of cost-sharing reductions and the SHOP in the 2014 Payment Notice and in the Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 interim final rule, published in the March 11, 2013 **Federal Register** (78 FR 15541). The provisions established in the interim final rule were finalized in the second final Program Integrity Rule.

We established standards related to Exchange user fees in the 2014 Payment Notice. We also established an adjustment to the FFE user fee in the Preventive Services Rule.

A Request for Comment relating to Exchanges was published in the August 3, 2010 **Federal Register** (75 FR 45584). An Initial Guidance to States on Exchanges was issued on November 18, 2010. A proposed rule was published in the July 15, 2011 **Federal Register** (76 FR 41866) to implement components of the Exchange. A proposed rule regarding Exchange functions in the individual market, eligibility determinations, and Exchange standards for employers was published in the August 17, 2011 **Federal Register** (76 FR 51202). A final rule implementing components of the Exchanges and setting forth standards for eligibility for Exchanges was published in the March 27, 2012 **Federal Register** (77 FR 18310) (Exchange Establishment Rule).

4. Market Rules

We published a proposed rule relating to the 2014 market reforms in the November 26, 2012 **Federal Register** (77 FR 70584), and a final rule implementing these provisions in the February 27, 2013 **Federal Register** (78 FR 13406) (Market Reform Rule).

5. Medical Loss Ratio

We published a request for comment on PHS Act section 2718 in the April 14, 2010 **Federal Register** (75 FR 19297), and published an interim final rule with a 60-day comment period relating to the medical loss ratio (MLR) program on December 1, 2010 (75 FR 74864). A final rule with a 30-day comment period was published in the December 7, 2011 **Federal Register** (76 FR 76574).

B. Stakeholder Consultation and Input

In addition to seeking advice from the public on risk adjustment data validation, HHS has consulted with stakeholders on policies related to the operation of Exchanges, including the SHOP and the premium stabilization programs. HHS has held a number of listening sessions with consumers, providers, employers, health plans, the actuarial community, and State representatives to gather public input. HHS consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners, regular contact with States through the Exchange Establishment grant and Exchange Blueprint approval processes, and meetings with Tribal leaders and representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. We considered all of the public input as we developed the policies in this final rule.

C. Intended Future Rulemaking

Some of the public input suggested changes for 2015 that require additional rulemaking. In the interest of transparency, we describe here the potential policies that we intend to include in such future rulemaking for public comment.

Eligibility & Enrollment: We intend to propose in future rulemaking a limited number of revisions to our rules on eligibility, enrollment, and eligibility appeals. For example, we intend to propose that an appeals entity be required to dismiss an appeal if the employer or employee withdraws the request in writing or by telephone. In future rulemaking, we also intend to propose that an Exchange may establish one or more standard processes for prorating premiums for partial month enrollment, and that the FFE will establish one consistent with the methodology finalized in this rule for the FF–SHOPs.

Index of Premium Growth and Income Growth: To implement section 5000A(e)(1)(D) of the Code, we intend to propose a methodology for determining the excess of the rate of premium growth over the rate of income growth for years after 2014. We are also considering modifying our rounding rules to always round certain cost-sharing parameters down to the next lower multiple of $50.

Plan Management: In future rulemaking, we intend to propose technical amendments to standards for issuing civil money penalties against QHP issuers and for decertifying QHPs, as currently set forth in 45 CFR 156.805 and 156.810.

Plan Changes: We intend to outline in future guidance the distinction between when a plan is being modified and when it is being terminated for purposes of plan renewal. For example, if an issuer makes changes to a plan that cause it to be in a different metal level, it would in fact be considered to be a new plan. We also intend to propose that issuers utilize standard notices in a format designated by the Secretary when discontinuing a product.

HIPAA Opt-Out for Self-Funded, 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 certain provisions of title XXVII of the PHS Act. We intend to propose amendments to

the non-Federal governmental plan regulations (45 CFR 146.180) to reflect the amendments made by the Affordable Care Act to these provisions, consistent with previously released guidance.[4]

Fixed Indemnity Insurance in the Individual Market: As indicated in previously released guidance, we intend to propose to amend the criteria for fixed indemnity insurance to be treated as an excepted benefit in the individual health insurance market.[5]

Minimum Essential Coverage: On October 31, 2013, we published guidance indicating that certain types of foreign group coverage are recognized as minimum essential coverage.[6] We intend to propose amendments to in future rulemaking that would codify the treatment of foreign group coverage as described in the October 31, 2013 guidance. We also intend to clarify that entities other than plan sponsors (for example, issuers) can apply for their coverage to be recognized as minimum essential coverage, pursuant to the process outlined in 45 CFR 156.604 and guidance thereunder.[7]

Navigator, Non-Navigator Assistance Personnel, and Certified Application Counselor Program Standards: We also intend to specify in future rulemaking certain types of State laws applicable to Navigators, non-Navigator assistance personnel, and certified application counselors that HHS would consider to prevent the application of the provisions of title I of the Affordable Care Act. We intend to propose through future rulemaking to update the standards applicable to Navigators and non-Navigator assistance personnel. In addition, we intend to propose standards specific to certified application counselors and certified application counselor designated organizations that would prohibit them from receiving consideration, directly or indirectly, from health insurance issuers or stop loss insurance issuers in connection with the enrollment of consumers in QHPs or non-QHPs, and that would require certified application counselors to be recertified on at least an annual basis. We further intend to propose that, in specific circumstances, certified application counselor designated organizations may serve targeted populations without violating the broad non-discrimination requirement related to Exchange functions.

Civil Money Penalties for Consumer Assistance Entities: In future rulemaking, we intend to propose that HHS may impose civil money penalties against Navigators, non-Navigator assistance personnel, certified application counselor designated organizations, and certified application counselors in Federally-facilitated and State Partnership Exchanges, if these entities or individuals violate Federal requirements.

Quality: In future rulemaking, we intend to propose quality reporting requirements for Exchanges and QHP issuers, including standards related to the implementation of the quality rating system (QRS), enrollee satisfaction survey (ESS), and a monitoring and appeals process for survey vendors. We intend to propose a beta testing period of the QRS and ESS in 2015 to provide early feedback to Exchanges and QHP issuers and begin public reporting of quality rating information in 2016.

Risk Corridors: In response to our proposed adjustments to the risk corridors program to account for the transitional policy, we received comments urging us to raise the ceiling on allowable administrative costs for QHP issuers in all States. We are carefully analyzing it to consider proposing for the 2015 benefit year, considering its policy and budgetary implications, and would consider making corresponding changes to the risk corridors profit floor and to the MLR regulations at that time. We would implement this policy up to the point of budget neutrality, and may make downward adjustments to parameters if necessary.

SHOP: In future rulemaking, we intend to propose amendments to align the dates for the annual election periods for qualified employers in all SHOPs with the start of open enrollment in the corresponding individual market Exchange for the 2015 benefit year. We also plan to propose to remove the required minimum lengths of both the employer election period and the employee open enrollment period to provide additional flexibility to SHOPs and qualified employers, which would permit SHOPs to complete the entire election and enrollment processes in fewer than 45 days.

We are considering proposing through future rulemaking specific circumstances under which States could recommend that a SHOP modify the employee choice provision in 2015 if doing so would preserve and promote affordable insurance for employees and small businesses.

Medical Loss Ratio: We intend to propose several amendments to the MLR regulations (45 CFR Part 158). We intend to propose standardized methodologies to take into account the special circumstances of issuers associated with the initial open enrollment and other changes to the market in 2014, including incurred costs due to technical problems during the launch of the State and Federal Exchanges. We also intend to propose amendments that would improve the consistency of MLR and rebate calculations in States that require the individual and small group markets to be merged. In addition, we intend to propose an extension to the period during which issuers may include ICD–10 conversion costs in the MLR numerator and a clarification to the rules for distribution of *de minimis* rebates.

III. Provisions of the Final Regulations and Analysis and Responses to Public Comments

A proposed rule, titled "Patient Protection and Affordable Care Act: HHS Notice of Benefit and Payment Parameters for 2015" was published in the December 2, 2013 **Federal Register** (78 FR 72322) with a comment period ending on December 26, 2013. In total, we received 129 comments from various stakeholders, including States, health insurance issuers, consumer groups, labor entities, industry groups, provider groups, patient safety groups, national interest groups, and other stakeholders. The comments ranged from general support or opposition to the proposed provisions to very specific questions or comments regarding proposed changes. We received a number of comments and suggestions that were outside the scope of the proposed rule and therefore will not be addressed in this final rule.

Another proposed rule, entitled "Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, and Eligibility Appeals" (78 FR 37032), was published in the **Federal Register** on June 19, 2013 with a comment period ending on July 19, 2013. We received a total of 99

[4] Amendments to the HIPAA opt-out provision (formerly section 2721(b)(2) of the Public Health Service Act) made by the Affordable Care Act (September 21, 2010). Available at: *http://www.cms.gov/CCIIO/Resources/Files/Downloads/opt_out_memo.pdf.*

[5] FAQs about Affordable Care Act Implementation (Part XVIII) and Mental Health Parity Implementation, Q11 (January 9, 2014). Available at: *http://www.cms.gov/CCIIO/Resources/Foct-Sheets-ond-FAQs/oco_implementotion_faqs18.html* and *http://www.dol.gov/ebsa/faqs/foq-oca18.html.*

[6] *See* CCIIO Sub-Regulatory Guidance: Process for Obtaining Recognition as Minimum Essential Coverage (October 31, 2013). Available at: *http://www.cms.gov/CCIIO/Resources/Regulations-ond-Guidonce/Downloods/mec-guidance-10-31-2013.pdf.*

[7] *See* CCIIO Sub-Regulatory Guidance: Process for Obtaining Recognition as Minimum Essential Coverage (October 31, 2013). Available at: *http://www.cms.gov/CCIIO/Resources/Regulations-ond-Guidonce/Downloods/mec-guidonce-10-31-2013.pdf.*

comments from various stakeholders, including States, health insurance issuers, consumer groups, agents and brokers, provider groups, Members of Congress, individuals, Tribal organizations, and other stakeholders. In this final rule, we are only finalizing from that proposed rule provisions related to standards for the SHOP to require all QHP issuers to make any change to rates at a uniform time.[8] In this final rule, we are finalizing language proposed at § 155.705(b)(6)(ii) at § 155.705(b)(6)(i)(A) instead of at (b)(6)(ii), to make clear that we never intended for this proposal to supersede the language at current § 155.705(b)(6)(ii), and are making a minor change to replace the word FF–SHOP with the term "Federally-facilitated SHOP."

In this final rule, we provide a summary of each proposed provision, a summary of the public comments received and our responses to them, and the provisions we are finalizing. We note that nothing in these regulations limits the authority of the Office of the Inspector General (OIG) as set forth by the Inspector General Act of 1978 or other applicable law.

Comment: We received a number of comments requesting that the comment period be extended to 60 days.

Response: While we are sympathetic to these concerns, we received numerous detailed, substantive submissions on the contents of the rule. Additionally, the timeline for publication of this final rule accommodates issuer deadlines applicable for the 2015 benefit year.

A. Part 144—Requirements Relating to Health Insurance Coverage

In 45 CFR 144.103, we proposed to amend the definition of "policy year" for student health insurance coverage to mean generally the 12-month period that is designated as the policy year in the policy documents of the student health insurance coverage (rather than a calendar year). This amendment takes into account that student health insurance coverage is traditionally offered on an academic year basis with a policy year other than the calendar year. It is also consistent with our proposal in § 147.145 to exempt student health insurance coverage, a type of individual coverage, from certain calendar year requirements that apply to individual health insurance coverage.

We received comments supporting this proposal. We are finalizing the amendment to the definition of "policy year" with the following minor modification. We remove the word "individual" from the reference to "individual health insurance coverage" so that the terminology is appropriate for both grandfathered individual market and student health insurance coverage. Accordingly, the definition of "policy year" with respect to grandfathered individual health insurance coverage and student health insurance coverage generally now reads as "the 12-month period that is designated as the policy year in the policy documents of the health insurance coverage."

B. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

1. Composite Premiums

Section 2701(a)(1) of the PHS Act restricts the variation in premium rating for a particular plan or coverage to four factors: family size, geography, age, and tobacco use (within limits). Section 2701(a)(4) of the PHS Act further requires that any rating variation for age and tobacco use must be applied based on the portion of the premium attributable to each family member covered under a group health plan or health insurance coverage. These rules generally apply to health insurance issuers offering non-grandfathered individual market and small group market coverage, both through and outside an Exchange, for plan or policy years beginning on or after January 1, 2014.[9]

Consistent with the rating rules of section 2701 of the PHS Act, we established in 45 CFR 147.102(c) of the Market Reform Rule that the total premium charged by an issuer to a group health plan (in the small group market) or family (in the individual market) is generally determined by summing the premiums of each individual enrolled in the plan or coverage based on their age and tobacco use. This rating practice is known as per-member rating (also referred to as "list billing").

In the small group market, section 2701 of the PHS Act regulates the premium "rate" that may be charged by an issuer for a group health plan based on the age and tobacco use of each enrollee; however the statute does not preclude the possibility that the group could be charged an amount for enrollees based on the average premium per member of the group, rather than their own specific per-member amount. We codified this interpretation in § 147.102(c)(3) of the Market Reform rule, which provides that nothing prevents an issuer in the small group market from dividing the total group premium by the total number of enrollees covered under the plan to develop an average premium amount per enrollee. The preamble to the proposed rule referred to this practice as "composite rating." However, to avoid unintended confusion with the traditional industry use of that term, we use only the terms "composite premiums" or "average enrollee premium amounts" when referring to average per-enrollee premium amounts in this final rule.[10] An issuer may offer composite premiums in connection with a small group health plan as long as the total group premium calculated at the time of applicable enrollment at the beginning of the plan year equals the amount that is derived from per-member rating.[11]

In the proposed rule, we proposed to amend § 147.102(c)(3) to specify that if an issuer offers a composite premium in connection with a group health plan in the small group market, the composite premium that was calculated based on applicable enrollment at the beginning of the plan year cannot vary during the plan year. For example, if a new hire enrolls in the plan in the middle of the plan year, the issuer would not adjust the average enrollee premium amount

[8] Other provisions of that proposed rule were finalized in two rules, the "first final Program Integrity Rule" published in the August 30, 2013 **Federal Register** (78 FR 54070) and the "second final Program Integrity Rule" published in the October 30, 2013 **Federal Register** (78 FR 65046).

[9] Section 2701(a)(5) of the PHS Act provides that if a State exercises the option of offering large group market QHPs in the SHOP, the rating rules in section 2701 that apply to the small group market will also apply to all coverage offered in that State's large group market, except for self-insured group health plans.

[10] The term "composite rating" has historically referred to an issuer rating practice that used the rating characteristics of a group as a whole—average employee health risk, average employee age, group size, and industrial code, among others—to determine an average rate per employee and corresponding average rates for different coverage tiers (for example, employee only, employee plus spouse, employee plus one or more children, and family coverage). This rating practice is no longer permitted under section 2701 of the PHS Act.

[11] Under 45 CFR 147.102(c)(2), States that do not permit rating for age or tobacco use may require health insurance issuers in the individual and small group markets to use uniform family tiers and corresponding multipliers established by the State. In States that elect this approach, a small group market issuer may offer composite premiums in connection with a group health plan, as long as the total group premium equals the amount that is derived from family-tier rating. For ease of reference, we do not discuss this alternative each time we refer to a total group premium equaling the sum of per-member premiums. However, we note that references in this preamble to the total group premium equaling the sum of per-member premiums also include references to the total group premium equaling the sum of family-tier premiums in States with community rating that have established uniform family tiers.

for the group based on the addition of the new enrollee. Rather, the amount that would be charged to the group for the new hire would be the same average enrollee premium amount that was established at the beginning of the plan year, and that amount would be added to the total group premium. The issuer would recalculate the average enrollee premium amount for the group only upon renewal.

We proposed this policy to ensure that composite premiums for small group coverage—and thus employer contributions to coverage—could remain stable during the plan year even if the composition of the group changes (for example, due to employees adding or dropping coverage). Additionally, we indicated that we were considering establishing a "tiered-composite" premium structure under which a separate composite premium could be calculated for different tiers or categories of enrollees covered under a group health plan (such as employees, adult dependents, and child dependents). We described several possible alternatives for implementing tiered-composite premiums and sought comment on whether and how to establish such approach.

We are finalizing our composite premium proposals with the addition of a tiered-composite premium structure based on one of the alternatives discussed in the preamble to the proposed rule. Specifically, we provide that a composite premium charged to a small group health plan must be based on enrollment of "participants and beneficiaries" at the beginning of the plan year, and may not vary until renewal. We also provide that any rating for tobacco use cannot be included in the composite premium for all enrollees but instead must be applied on a per-member basis. Finally, we specify that an issuer offering composite premiums with respect to a particular product offered in the small group market in a State must do so uniformly for all group health plans enrolling in that product, giving those group health plans the option to pay premiums based on a composite premium methodology (to the extent permitted by applicable State law and except as provided in § 156.285(a)(4) of this final rule when employee choice is offered in the FF–SHOPs).

Comment: In response to the composite premium proposals, we received a few comments that suggested some concern and confusion that per-member rating would no longer be required.

Response: We have not changed the basic per-member rating requirement under section 2701 of the PHS Act, or the policy that in the small group market, an issuer may convert a group's per-member premiums into average enrollee premium amounts as long as the total premium owed by the plan to the issuer is the same total produced by per-member rating. The proposed rule and this final rule simply provide clarity about when the per-member rating requirement is satisfied. Specifically, we recognize that, where an issuer offers a composite premium in connection with a group health plan, requiring strict adherence to a per-member buildup at all times throughout the plan year may impose undue administrative burden on issuers and create premium instability for employers and employees. Given that the statute can reasonably be read to support either interpretation, we are finalizing amendments to § 147.102(c)(3) which make clear that the requirement that the sum of composite premiums must equal the sum of per-member premiums is determined at the time of applicable enrollment at the beginning of the plan year.

Comment: Some commenters urged HHS to make compositing premiums mandatory for all small group market issuers. Other commenters emphasized that the decision to offer composite premiums should continue to be voluntary at the option of the issuer (or as required by applicable State law). One commenter noted that issuers historically have offered composite rates to some group health plans but not others (for example, groups with more than ten employees) and requested clarification of whether this practice could continue.

Response: This final rule neither requires nor prohibits the compositing of premiums in connection with a small group health plan (except with respect to employee choice in the FF–SHOPs as discussed below). This decision is within the discretion of the issuer unless applicable State law requires composite premiums. However, in response to comments, we are clarifying that if an issuer elects to offer composite premiums with respect to a particular product offered in the small group market in a State, the issuer cannot do so for only certain group health plans; the issuer must make the option to composite premiums uniformly available to all group health plans enrolling in that product, to the extent permitted by applicable State law and subject to § 156.285(a)(4) of this final rule (prohibiting QHP issuers from offering composite premiums when employers offer employee choice in the FF–SHOPs). Plan sponsors selecting a product that offers composite premiums may then decide whether to pay premiums based on a per-member or composite premium methodology. This does not affect what portion of the group premium will be paid by the employer or the employee.[12]

Comment: One commenter stated that requiring issuers to accept a premium based on a group's composite premium at the beginning of the plan year as the standard rate for the entire plan year could affect the premium charged to the group health plan.

Response: Depending on whether a new enrollee added to the plan mid-year is above or below the average age of the group, the composite premium might be higher or lower than the per-member premium that would otherwise be charged for that individual. Consequently, the total group premium would at that point no longer precisely equal the sum of the per-member premiums for each enrollee until the next renewal. Although this policy may thus create some variation from the result that would be produced by calculating premiums based on a strict per-member approach, we do not believe it will result in any material under-rating or over-rating in the market generally, because rates on average should balance out over the issuer's single risk pool for the small group market. Additionally, as described above, we believe this method of calculating premiums is still based on a per-member rating methodology that is consistent with the statute. However, we will monitor the effects of this policy on the small group market and assess whether future changes may be necessary.

Comment: In response to the request for comment regarding a uniform tiered-composite premium structure, we received comments that both supported and opposed the tiered-composite approach under consideration. Commenters who opposed the suggested alternatives for implementing tiered-composite premiums emphasized the differences between the suggested alternatives and current standard industry practice, which commonly

[12] This separate pricing decision is governed by section 2705(b) of the PHS Act, as amended by the Affordable Care Act and incorporated into ERISA and the Code (providing that a group health plan, and a health insurance issuer offering group or individual health insurance coverage, generally may not require any individual (as a condition of enrollment or continued enrollment under the plan or coverage) to pay a premium or contribution which is greater than the premium or contribution for a similarly situated individual enrolled in the plan or coverage based on any health factor of the individual or a dependent of the individual).

establishes four or five coverage tiers and corresponding premiums that do not vary based on the number of children covered. Some commenters opposed the use of composite premiums altogether, suggested alternative tiered-composite approaches using coverage tiers and corresponding multipliers, or advocated for a "pure" composite that averages the per-member rates of all enrollees in a plan, including the rates of both adults and children. Commenters who supported a tiered-composite methodology generally thought it would ensure that premiums for family coverage appropriately reflect the lower rates of children.

Response: We agree with commenters who suggested a tiered-composite premium approach would benefit families with children enrolled in plans using composite premiums. Based on our analysis, without a tiered approach, the composite premium charged for a family consisting of two adults (both age 24) and three children (all under age 21) would be about 35 to 55 percent higher than the composite premium charged for the same family under a tiered approach, depending on the average age of the group.[13] Accordingly, this rule establishes a tiered-composite methodology based on one of the alternatives discussed in the preamble to the proposed rule.

The rule creates a two-tiered composite premium structure for small group market issuers that offer composite premiums, effective for plan years beginning on or after January 1, 2015. Under this approach, an issuer offering composite premiums will calculate a composite premium (or average enrollee premium amount) for each individual age 21 and older and a composite premium for each individual under age 21 covered under the plan. We note that an individual's status as an employee or adult dependent is not relevant for this purpose. To determine the total premium charged by the issuer for a given family composition, the issuer sums the average enrollee premium amount for each covered family member age 21 and older and the average enrollee premium amount for each covered family member under age 21, as applicable, taking into account no more than three covered children under age 21 and applying any applicable tobacco rating factor on a per-member basis (as discussed below).

For example, suppose the composite premium for a group health plan is $200 for each covered individual age 21 and older and $100 for each covered individual under age 21. Also suppose that none of the enrollees uses tobacco. In this example, the premium charged for a single employee (over age 21) would be $200; the premium charged for an employee and spouse (both over age 21) would be $400 ($200 + $200); and the premium charged for a family consisting of an employee and spouse (both over age 21) and four children (all under age 21) would be $700 ($200 + $200 + $100 + $100 + $100 + $0). An example of how a tobacco rating factor would be applied is provided below.

We discussed in the proposed rule that, under the approach we were considering, States could establish different tiered-composite premium standards with approval from HHS. We are finalizing this flexibility for States in this final rule. Thus, the tiered-composite premium methodology established in this rule will apply in the small group market in a State, both for coverage offered through a SHOP (subject to the amendments in § 156.285(a)(4) of this final rule that limit the availability of composite premiums in the FF–SHOPs when employee choice is offered) and for coverage outside of a SHOP, unless a State establishes and HHS approves an alternate tiered-composite methodology for the State.

Section 147.103 of the Market Reform Rule directs States to report certain information to HHS about State-specific rating requirements, including State-specific standards or requirements concerning average enrollee premium amounts. We interpret § 147.103(a)(5) to include a requirement that States report any State-proposed tiered-composite premium methodology that relates to average enrollee premium amounts. Accordingly, States seeking to adopt tiered-composite premium standards that differ from the Federal standards will submit information about such standards to HHS in accordance with the State reporting provisions set forth in § 147.103 and as further described in guidance. HHS will review a State's composite premium standards to ensure (1) the State standards are at least as consumer protective as the Federal standards; and (2) the State methodology produces a total group premium that equals the amount that is derived through per-member rating established at the time of applicable enrollment at the beginning of the plan year.

We believe these composite premium standards will guarantee minimum consumer protections in every State to assure that children are charged only child premium rates, while promoting administrative simplicity for issuers and employers and providing flexibility for States to establish alternative approaches for their health insurance market.

Comment: Tobacco rating is subject to the non-discrimination and wellness provisions under section 2705 of the PHS Act (providing that an issuer in the group market may vary the premium rate based on legal use of tobacco only in connection with a wellness program meeting the standards of section 2705(j) of the PHS Act and its implementing regulations).[14] The preamble to the proposed rule indicates that this is true regardless of whether a tobacco rating factor is applied on a per-member or composite basis.[15] One commenter suggested that including any surcharge for tobacco use in a composite premium was inconsistent with the rationale of ensuring that tobacco rating is applied only to portion of the premium attributable to each individual covered under the plan or coverage.

Response: To ensure that non-tobacco users do not have to pay any portion of a premium that is attributable to tobacco users enrolled in the plan, and to promote consistency with the wellness program requirements, this rule excludes any rating for tobacco use (as defined in § 147.102(a)(1)(iv)) from any enrollee's composite premium. If an issuer offering composite premiums wishes to rate for tobacco use, consistent with applicable Federal and State law, the issuer must calculate the tobacco rating factor based on the applicable enrollee's per-member premium, not the composite premium for all enrollees. The resulting tobacco rating factor is added to the composite premium for the enrollee who uses tobacco to create a premium specific to each tobacco user. For example, assume that the rate of a non-tobacco user is $100 and the issuer does not rate based on age. The issuer imposes a 1.5:1 tobacco rating factor for individuals age 45 and older who use tobacco (that is, a $50 tobacco surcharge) and a 1.3:1 tobacco rating factor for individuals under age 45 who use tobacco (that is, a $30 tobacco surcharge). Further, assume that the composite premium for a group health plan is $100 for each

[13] For illustration, we assumed per-member premiums for family members of different ages enrolled in employer-group coverage and assumed various average ages for the group. For each average age, we calculated the total composite family premium that would be charged under a pure composite and two-tiered composite approach. The difference in the total composite premium for the family between the pure composite and two-tiered composite approach ranged from 35 to 55 percent, depending on the average age of the group.

[14] 26 CFR 54.9802–1(f); 29 CFR 2590.702(f); and 45 CFR 146.121(f).

[15] 78 FR at 72328, footnote 6.

covered individual age 21 and older. In this example, the premium charged for a single employee (over age 45) who uses tobacco would be $150 ($100 + $50), and the premium charged for a single employee (under age 45) who uses tobacco would be $130 ($100 + $30), subject to the non-discrimination and wellness provisions under section 2705 of the PHS Act.

Comment: Some commenters questioned how a composite premium would be established for adult and child dependents under a two-tiered or three-tiered composite approach if none were enrolled at the time of initial enrollment (or re-enrollment).

Response: This rule establishes a two-tiered rather than a three-tiered composite premium structure in response to these comments. The composite premium calculated at the beginning of the plan year for covered adults applies for all covered individuals age 21 and older regardless of whether they are an employee or adult dependent or when they enroll during the plan year. The composite premium calculated for covered individuals under age 21 is simply the per-member child age rate, which is a single rate for children ages 0 through 20 pursuant to § 147.102(d) and (e), regardless of the total number of children covered under the plan (taking into account no more than three covered children under age 21 with respect to a given family). For these reasons, and because a tobacco rating factor may be applied only on per-member basis, a composite premium will apply for both adult and child dependents who enroll after the start of the plan year (subject to the applicability of the tobacco rating factor).

Comment: Commenters suggested modifying the regulation text to clarify that a composite premium is calculated based on applicable employee "and dependent" enrollment at the beginning of the plan year.

Response: Because composite premiums will be generated for employees and dependents, as well as other types of group health plan enrollees (for example, retirees), we now refer to "participants" and "beneficiaries" in the regulation text for consistency with the terms generally used under the Employee Retirement Income Security Act of 1974 (ERISA).

Comment: The proposed rule provided that the new composite premium provisions would become applicable for plan years beginning on or after January 1, 2015. Some commenters noted that small group policies are issued on a rolling basis throughout the year and recommended the requirements become effective prior to 2015.

Response: We recognize that issuers have developed the expertise and resources to comply with the per-member rating methodology generally required under the law and regulations and that some issuers might need time to adjust their systems to offer composite premiums in accordance with this rule. Therefore, the rule will take effect as a requirement for plan years beginning on or after January 1, 2015. However, as noted in the preamble to the proposed rule, we encourage issuers to voluntarily adopt the final rule's composite premium standards for plan years beginning in 2014.

2. Student Health Insurance Coverage

Student health insurance coverage is traditionally offered on an academic year basis with a policy year other than a calendar year. Accordingly, we proposed in § 147.145 to exempt student health insurance from certain calendar year requirements that would otherwise apply to student health insurance coverage as a type of individual health insurance coverage. We proposed to exempt student health insurance coverage from the requirement to establish open enrollment periods and coverage effective dates based on a calendar policy year, and clarified that student health insurance coverage is not required to be offered as a calendar year plan.

We received comments supporting this proposal and are finalizing these provisions as proposed.

C. Part 153—Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment Under the Affordable Care Act

1. Provisions for the State Notice of Benefit and Payment Parameters

Section 1341 of the Affordable Care Act provides that States may elect to operate the transitional reinsurance program. Based on HHS's communications with States, as of January 31, 2014, Connecticut is the only State that elected to operate a transitional reinsurance program. We indicated in the 2014 Payment Notice that Maryland had elected to operate reinsurance for 2014; however since the publication of the 2014 Payment Notice, Maryland has indicated that it wishes to defer the operation of the transitional reinsurance program to HHS. Because, at this time, taking on the operation of the reinsurance program on behalf of Maryland would not raise operational concerns, we are confirming that HHS will operate reinsurance on Maryland's behalf.

Section 153.100(c) provides that a State that operates or establishes a risk adjustment or reinsurance program, and is required to publish a State notice of benefit and payment parameters under § 153.100(a) or (b), must publish an annual State notice of benefit and payment parameters by March 1st of the calendar year prior to the benefit year for which the notice applies. However, because the 2014 Payment Notice was published after March 1, 2013, the 2014 Payment Notice extended this deadline to the 30th day following publication of that final rule. Similarly, we are extending the deadline for publication of a 2015 State notice of benefit and payment parameters until the 30th day following publication of this final rule. Consistent with this policy, we intend to propose in future rulemaking that for future benefit years, the publication deadline for the State notice of benefit and payment parameters be the later of March 1st of the calendar year prior to the applicable benefit year, or the 30th day following publication of the final HHS notice of benefit and payment parameters for the calendar year.

2. Provisions and Parameters for the Permanent Risk Adjustment Program

The risk adjustment program is a permanent program created by section 1343 of the Affordable Care Act that transfers funds from lower risk, non-grandfathered plans to higher risk, non-grandfathered plans in the individual and small group markets, inside and outside the Exchanges. A State that is approved or conditionally approved by the Secretary to operate an Exchange may establish a risk adjustment program, or have HHS do so on its behalf.

In the proposed rule, we proposed a risk adjustment user fee to support HHS operation of the risk adjustment program in 2015. We also considered two adjustments to our risk adjustment methodology: One concerning adjustments for Medicaid alternative plans and the other concerning adjustments relating to the geographic rating areas. We also proposed a default counting method for determining whether a plan is a small group plan for purposes of risk adjustment when a State's counting method does not account for non-full-time employees. We proposed standards for risk adjustment data validation, including a sampling methodology, audit standards, internal consistency standards, a methodology to adjust risk scores, and actions upon noncompliance. We proposed that HHS have the authority to

conduct audits of issuers of risk adjustment covered plans.

a. Risk Adjustment User Fees

If a State is not approved to operate, or chooses to forgo operating, its own risk adjustment program, HHS will operate a risk adjustment program on the State's behalf. As described in the 2014 Payment Notice, HHS's operation of risk adjustment on behalf of States is funded through a risk adjustment user fee. Section 153.610(f)(2) provides that an issuer of a risk adjustment covered plan must remit a user fee to HHS for each month equal to the product of its monthly enrollment in the plan and the per-enrollee-per-month risk adjustment user fee specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year.

OMB Circular No. A–25R establishes Federal policy regarding user fees, and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The risk adjustment program will provide special benefits as defined in section 6(a)(1)(b) of Circular No. A–25R to an issuer of a risk adjustment covered plan because it will mitigate the financial instability associated with risk selection as other market reforms go into effect. The risk adjustment program also will contribute to consumer confidence in the health insurance industry by helping to stabilize premiums across the individual and small group health insurance markets.

For the 2015 benefit year, we proposed to use the same methodology that we used in the 2014 Payment Notice to estimate our administrative expenses to operate the risk adjustment program. That proposed methodology was based upon our contract costs in operating risk adjustment on behalf of States. The contract costs we considered cover development of the model and methodology, collections, payments, account management, data collection, data validation, program integrity and audit functions, operational and fraud analytics, stakeholder training, and operational support. We proposed not to set the user fee to cover costs associated with Federal personnel. We proposed to calculate the user fee by dividing HHS's projected total costs for administering the risk adjustment programs on behalf of States by the expected number of enrollees in risk adjustment covered plans in HHS-operated risk adjustment programs for the benefit year (other than plans not subject to market reforms and student health plans, which are not subject to payments and charges under the risk adjustment methodology HHS uses when it operates risk adjustment on behalf of a State).

We estimated that the total cost for HHS to operate the risk adjustment program on behalf of States for 2015 would be approximately $27.3 million, and that the per capita risk adjustment user fee would be no more than $1.00 per enrollee per year. We are finalizing the proposed methodology for benefit year 2015, and are finalizing a per capita risk adjustment user fee of $0.96 per enrollee per year, which we will apply as a per-enrollee-per-month risk adjustment user fee of $0.08.

We received no comments on the risk adjustment user fee, and are therefore finalizing this proposal as proposed.

b. HHS Risk Adjustment Methodology Considerations

In the 2014 Payment Notice, we finalized the methodology that HHS will use when operating a risk adjustment program on behalf of a State in 2014. We proposed to use the same methodology in 2015, but proposed to amend the methodology by applying an adjustment for individuals enrolled in premium assistance Medicaid alternative plans. We proposed to apply the amended methodology beginning in 2014. We also sought comment on potential adjustments to the geographic cost factor to account for rating areas with low populations in the HHS risk adjustment methodology for future years.

We received a number of general comments regarding the HHS risk adjustment methodology.

Comment: Commenters requested that HHS provide additional guidance on the ICD–10 transition for risk adjustment, including the ICD–10 mappings, as soon as possible.

Response: We will publish updated ICD–9 instructions and software and then a combined set of ICD–9 and ICD–10 instructions and software on our Web site, as we did for the original ICD–9 software and instructions.[16] Because ICD–10 codes will be accepted for risk adjustment beginning October 1, 2014, we intend to publish these documents shortly.

Comment: One commenter requested that the risk adjustment model be calibrated for 2015 using the most current data possible. Other commenters suggested that HHS incorporate pharmacy utilization in the risk adjustment model. One commenter suggested that HHS include transitional plans' data in the risk adjustment model, but exclude them from payments and charges.

Response: We believe it is important to maintain model stability in implementing the risk adjustment methodology in the initial years of risk adjustment, and therefore do not intend to recalibrate the model in the initial years. Similarly, we do not intend to significantly change the model by including pharmacy utilization, though we continue to consider whether and how to include prescription drug data in future models. Finally, as we described in the 2014 Payment Notice (78 FR 15418), under our current methodology, plans not subject to the market reform rules are not subject to risk adjustment charges and do not receive risk adjustment payments. Because under the transitional policy, the Federal government will not consider certain health insurance coverage in the individual or small group market renewed after January 1, 2014, under certain conditions, to be out of compliance with specified 2014 market rules, and requested that States adopt a similar non-enforcement policy, transitional plans are able to set premiums and provide coverage as if they were not subject to market reform rules.[17] For this reason, transitional plans are not subject to risk adjustment payments and charges under our methodology at this time.

Comment: One commenter sought clarification on the risk scoring process. The commenter sought clarification on whether an enrollee's risk score is calculated monthly and aggregated to reflect changes in the receipt of cost-sharing reductions. The commenter also sought clarification on whether diagnoses carry through to the new plan if a qualifying event results in a special enrollment period and an enrollee changes plans, but stays with the same issuer. One commenter questioned whether an issuer would receive credit for the diagnoses on risk adjustment eligible claims paid by the issuer during a grace period if the issuer later processes a retroactive termination because the individual does not pay the premium.

Response: For each enrollee, HHS will use all risk adjustment eligible claims or encounters submitted from across all of the issuer's risk adjustment covered

[16] The HHS-Developed Risk Adjustment Model Algorithm Software is available at: *http://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/index.html* under "Regulations & Guidance" (posted under "Guidance" on May 7, 2013).

[17] Letter to Insurance Commissioners, Center for Consumer Information and Insurance Oversight, November 14, 2013. Available at: *http://www.cms.gov/CCIIO/Resources/Letters/Downloads/commissioner-letter-11-14-2013.PDF.*

plans to calculate a risk score. The diagnoses would be associated with each of the issuer's plans in which the individual enrolls. This means that if the enrollee changes plans within the same issuer, then the claims data from all of the issuer's plans will be utilized to calculate the member's plan-specific risk scores for each of these plans. We note that in accordance with our methodology, the risk score value could change based on cost-sharing reductions received or plan AV. However, to align with our distributed data collection approach, which collects data by issuer, we will not link enrollee data across different issuers, even if the issuers are affiliated with the same insurance company. Diagnoses from risk adjustment eligible claims will only be accepted with dates of service that occur during active enrollment periods. Therefore, claims associated with months during a grace period will be counted toward risk adjustment, so long as the months are not later subject to a retroactive termination.

We are finalizing the use of the 2014 Federal risk adjustment methodology when HHS operates a risk adjustment program on behalf of a State, for 2015, with the modification for the treatment of Medicaid alternative plans discussed below, effective for 2014 risk adjustment.

(i) Incorporation of Premium Assistance Medicaid Alternative Plans in the HHS Risk Adjustment Methodology

Section 1343(c) of the Affordable Care Act provides that risk adjustment applies to non-grandfathered health insurance coverage offered in the individual and small group markets. In some States, expansion of Medicaid benefits under section 2001(a) of the Affordable Care Act may take the form of enrolling newly Medicaid-eligible enrollees into individual market plans. For example, these enrollees could be placed into silver plan variations—either the 94 percent silver plan variation or the zero cost sharing plan variation—with a portion of the premiums and cost sharing paid for by Medicaid on their behalf. Because individuals in these types of Medicaid alternative plans receive significant cost-sharing assistance, they may utilize medical services at a higher rate. To address this induced utilization in the context of cost-sharing reduction plan variations in the HHS risk adjustment methodology, our methodology increases the risk score for individuals in plan variations by a certain factor. We proposed to use the same factor that we use to adjust for induced utilization for individuals enrolled in cost-sharing plan variations to adjust for induced utilization for individuals enrolled in the corresponding Medicaid alternative plan variations, and to implement these adjustments in 2014. Table 1 shows the cost-sharing adjustments for both 94 percent silver plan variation enrollees and zero cost-sharing plan variation enrollees for silver QHPs as finalized in the 2014 Payment Notice.

TABLE 1—COST-SHARING REDUCTION ADJUSTMENTS

Plan variation	Induced utilization factor
94 Percent Plan Variation	1.12
Zero Cost-Sharing Plan Variation of Silver QHP	1.12

We are finalizing the application of the cost-sharing reduction adjustments to corresponding Medicaid alternative expansion plans as proposed. We plan to evaluate these adjustments in the future, after data from the initial years of risk adjustment is available.

Comment: Commenters agreed with our approach for accounting for Medicaid alternative plans under risk adjustment, with one commenter recommending that we monitor utilization patterns and consider evaluating States' Medicaid alternative plans separately in 2015 and beyond.

Response: We intend to examine the utilization patterns of current Medicaid alternative plans and the benefit structure of future Medicaid alternative plans, and may make appropriate adjustments in the future.

(ii) Adjustment to the Geographic Cost Factor

As finalized in the 2014 Payment Notice, the geographic cost factor is an adjustment in the payment transfer formula to account for plan costs, such as input prices, that vary by geography and are likely to affect plan premiums. For the metal-level risk pool, it is calculated based on the observed average silver plan premium in a geographic area relative to the Statewide average silver plan premium. It is separately calculated for catastrophic plans in a geographic area relative to the Statewide catastrophic pool. However, as we noted in the proposed rule, several States have defined a large number of rating areas, potentially leading to rating areas with low populations. Less populous rating areas raise concerns about the accuracy and stability of the calculation of the geographic cost factor, because in less populous rating areas, the geographic cost factor might be calculated based on a small number of plans. Inaccurate or unstable geographic cost factors could distort premiums and the stability of the risk adjustment model.

We sought comment in the proposed rule on how to best adjust the geographic cost factors or geographic rating areas in future years to address these potential premium distortions. We also sought comment on how this adjustment should be implemented for a separately risk adjusted pool of catastrophic plans. We stated that we did not intend to make this adjustment for 2014.

Based on comments received, we will continue to implement the geographic cost factor for each rating area established by the State under § 147.102(b) and calculated based on the observed average silver plan premium for the metal-level risk pool, as finalized in the 2014 Payment Notice (78 FR 15433).

Comment: Commenters did not support making additional adjustments to the geographic cost factor. Commenters stated that the time and resources needed to calculate and implement such an adjustment would be considerable, and that any such adjustment would be unlikely to have a material impact on final risk adjustment results.

Response: We will not adjust the geographic cost factors or geographic rating areas, but will monitor 2014 risk adjustment data for any potential premium distortions.

c. Small Group Determination for Risk Adjustment

For a plan to be subject to risk adjustment, according to section 1343(c) of the Affordable Care Act and the definition of a "risk adjustment covered plan" in § 153.20, a plan must be offered

in the "individual or small group market." The definition of small group market in § 153.20 references the definition at section 1304(a)(3) of the Affordable Care Act.

Section 1304(a)(3) of the Affordable Care Act, in defining "small group market," references the definition of a "small employer" in section 1304(b)(2) of the Affordable Care Act. That definition provides that an employer with an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year will be considered a "small employer." However, section 1304(b)(3) of the Affordable Care Act provides that, for plan years beginning before January 1, 2016, a State may elect to define "small employer" to mean an employer with at least 1 but not more than 50 employees.

In the 2014 Payment Notice, we stated that we believe that the Affordable Care Act requires the use of a counting method that accounts for non-full-time employees, and that the full-time equivalent method described in section 4980H(c)(2)(E) of the Code is a reasonable method to apply (78 FR 15503). We stated that we believe that the risk adjustment program must also use a counting method that takes employees that are not full-time into account when determining whether a group health plan must participate in that program.

However, we also recognize that, because risk adjustment is intended to stabilize premiums by mitigating pricing uncertainty associated with the rating rules, it is important that the program be available to plans that are subject to the rating rules, to the extent permissible under the Affordable Care Act. We recognize that a number of States, which have primary enforcement jurisdiction over the market rules, may use counting methods that do not take non-full-time employees into account.

Thus, we are finalizing our proposal, with one modification—we are changing the cross-reference to the Code so that it references section 4980H(c)(2). In determining which group health plans participate as small group plans in the risk adjustment program, we will apply the applicable State counting method, unless the State counting method does not take into account employees that are non-full-time. In that circumstance, we will apply the counting method described in section 4980H(c)(2) of the Code and any implementing regulations.[18] We believe that this approach defers to State counting methods and aligns with State enforcement of rating rules, within the bounds of what is legally permissible under the Affordable Care Act.

Comment: One commenter supported our proposed counting method when a State counting method does not account for non-full-time employees. Some commenters urged us to maintain consistency with other counting methods, noting the administrative burden of having inconsistent counting methods across different Affordable Care Act programs. One commenter suggesting that we codify the average number of employees during the preceding calendar year as the single counting method across Affordable Care Act programs. Some commenters recommended deferring to the State counting method in the transitional years while collaborating with other Federal agencies to issue a uniform counting method in future rulemaking. One commenter recommended that if a group is required to be rated as a small group based on rating rules or SHOP requirements and is part of the single risk pool pricing, it should be included in the small group risk adjustment pool.

Response: We agree that risk adjustment should apply to plans subject to the market reform rating rules, to the extent permissible under the Affordable Care Act. We also agree with commenters that consistency in counting methods across Affordable Care Act programs is important, and we plan to collaborate with other Federal agencies to streamline counting methods in future rulemaking. To better address commenters' requests for consistency across Affordable Care Act programs, we have changed the Code reference from section 4980H(c)(2)(E) to 4980H(c)(2). This broader cross-reference will incorporate the limit in section 4980H(c)(2)(B) on how certain seasonal employees are counted, and will be consistent with the counting method used by the SHOP, as finalized in the 2014 Payment Notice (78 FR 15503). Prior to streamlining counting methods, because we interpret the employer size definitions in the Affordable Care Act to include non-full-time employees for purposes of determining small group status for purposes of risk adjustment, in States that do not account for non-full-time employees, we believe that requiring the large group counting method described in section 4980H(c)(2) of the Code (which accounts for non-full-time employees) is an appropriate standard because it is used by other Affordable Care Act programs and will reduce administrative burden for issuers.

d. Risk Adjustment Data Validation

The 2014 Payment Notice established a risk adjustment data validation program that HHS will use when operating risk adjustment on behalf of a State. In the 2014 Payment Notice (78 FR 15436), we specified a framework for this program that includes six stages: (1) Sample selection; (2) initial validation audit; (3) second validation audit; (4) error estimation; (5) appeals; and (6) payment adjustments.

To develop the details of the program, we sought the input of issuers, consumer advocates, providers, and other stakeholders. We issued the "Affordable Care Act HHS-Operated Risk Adjustment Data Validation Process White Paper" on June 22, 2013 (the "white paper").[19] That white paper discussed and sought comments on a number of potential considerations for the development of the risk adjustment data validation methodology. We received submissions from 53 commenters, including issuers, issuer trade groups, advocacy groups, and consultants. As we noted in the white paper, our overall goals are to promote consistency and a level playing field by establishing uniform audit requirements, and to protect private information by limiting data transfers during the data validation process.

In the proposed rule, we proposed provisions for the risk adjustment data validation process and methodology that reflect our analysis of the white paper comments and our discussions with stakeholders. We again note that a State operating a risk adjustment program is not required to adopt these standards.

We received some general comments about our proposed risk adjustment data validation methodology and process.

Comment: We received comments supporting the risk adjustment data validation methodology and process, noting that data validation is critical to issuer confidence and to encouraging the enrollment of individuals with significant health needs. Another commenter suggested that we model the HHS risk adjustment data validation program after the Medicare Advantage risk adjustment data validation program to the extent possible.

Response: We agree that a robust risk adjustment data validation program is

[18] We note that the IRS has published a final regulation that contains further details that would apply to this calculation (§ 54.4980H–2(c) (79 FR 8544).

[19] "Affordable Care Act HHS-Operated Risk Adjustment Data Validation Process White Paper." 22 June 2013. *https://www.regtap.info/uploads/library/ACA_HHS_OperatedRADVWhitePaper_062213_5CR_062213.pdf.*

critical to ensuring that we effectively promote issuer confidence and the goals of the risk adjustment program. We note that many aspects of the HHS risk adjustment data validation program were modeled after the Medicare Advantage risk adjustment data validation program. For example, we have adopted a sampling strategy modeled on the one used in the Medicare Advantage risk adjustment program. Additionally, we have elected to adopt the medical record as the authoritative source to verify diagnoses, and have required that certified reviewers perform medical record reviews, as discussed below. Both of those program features are modeled on the Medicare Advantage risk adjustment data validation process. However, because our risk adjustment methodology uses a more comprehensive set of data elements, our data collection approach is more robust, and our data validation approach is broader.

(i) Sample Selection

The first stage in the HHS-operated risk adjustment data validation process is the selection of a sample of an issuer's enrollees whose risk adjustment data will be validated. In the final 2014 Payment Notice, we stated that HHS would choose a sample size of enrollees such that the estimated risk score errors would be statistically sound and the enrollee-level risk score distributions would reflect enrollee characteristics for each issuer. We stated that in determining the appropriate sample size for data validation, we recognized the importance of striking a balance between ensuring statistical soundness of the sample, and minimizing the operational burden on issuers, providers, and HHS. Additionally, we stated that we would ensure that the sample would cover critical subpopulations of enrollees for each risk adjustment covered plan, such as enrollees with and without hierarchical condition categories (HCCs). To develop a proposed sample size for the first year of the HHS risk adjustment data validation program, in the proposed rule we proposed to use the methodology outlined in the white paper. We stated in the proposed rule that our goal in determining the enrollee sample size for the initial 2 years of risk adjustment data validation is to use a sample large enough to inform us in a statistically valid manner of the dynamics of the risk adjustment data validation process in operation, and to permit statistically valid estimation of risk score accuracy. As we established in the 2014 Payment Notice, in order to permit HHS to observe and optimize the risk adjustment data validation process, no payment adjustments will be made based on the risk adjustment data validation process for the initial 2 years of HHS-operated risk adjustment.

In the proposed rule, we proposed selecting the initial validation audit sample for a given benefit year by dividing the relevant population into a number of "strata," representing different demographic and risk score bands. For the initial 2 years of the risk adjustment data validation program, we proposed an initial validation audit sample of 200 enrollees from each issuer. We stated in the proposed 2014 Payment Notice and the proposed rule that the overall sample will reflect a disproportionate selection of enrollees with HCCs. In the proposed rule, we discussed in detail our sampling methodology, including our proposal to group enrollees to account for age characteristics and health status. Some commenters on the white paper suggested that we also consider sampling based on plan types and other characteristics. We will consider other sampling strategies in the future, but believe that we do not yet have enough experience with the risk adjustment process to determine the most appropriate sampling groups at this time. Therefore, we are finalizing a simple age and risk score stratification for the initial 2 years of the program. Following the division of the relevant population into strata, we will use the following formulas to calculate a proposed sample size for the initial validation audit each year. In general, the formula for the overall sample size for an issuer (n) is:

$$n = \frac{\left(\sum_{h=1}^{H} N_h S_h\right)^2}{\sum_{h=1}^{H} N_h S_h^{\,2} + \left(\frac{Prec \times Y}{z - value}\right)^2}$$

Where:

H is the number of strata;
N_h is the population size of the h^{th} stratum;
Y is the average risk score of the population, adjusted based upon the estimated risk score error;
S_h represents the standard deviation of risk score error for the h^{th} stratum;
Prec represents the desired precision level (for example, 10 percent, meaning a 10 percent margin of error in the estimated risk score); and
z-value is the z-value associated with the desired confidence level (for example, 1.96 for a two-sided 95 percent confidence level).

We are finalizing a sample size of 200 enrollees from each issuer for the initial 2 years of the program. The formula above will use real data from the HHS-operated risk adjustment program after this initial 2-year period to calculate a more precise, issuer-specific sample size for each issuer.

The formula for calculating the sample size for each stratum (n_h) is:

$$n_h = n \times \frac{N_h S_h}{\sum_{h=1}^{H} N_h S_h}$$

Where:

N_h is the population size of the h^{th} stratum;
n is the overall sample size; and
S_h represents the standard deviation of risk score error for the h^{th} stratum.

As we described in the proposed rule, for the 2014 benefit year, the parameters listed above were developed using data from two principal sources: Medicare Advantage risk adjustment data validation net error rates and variances; and expenditures data from the Truven Health Analytics 2010 MarketScan® Commercial Claims and Encounters database (MarketScan®). We chose to use Medicare Advantage error rates because Medicare Advantage utilizes an HCC-based methodology similar to the one used for HHS risk adjustment, and because it uses a similar risk adjustment data validation process to determine payment error rates.

We also chose to use the MarketScan® expenditure database because of the comprehensiveness of the database, which was the primary source for calibration for the HHS risk adjustment models. The database contains enrollee-specific claims utilization, expenditures, and enrollment across inpatient, outpatient, and prescription drug services from a selection of large employers and health plans. The database includes de-identified data from approximately 100 payers, and contains more than 500 million claims from insured employees, spouses, and dependents.

We used enrollee predicted expenditure results from our risk adjustment model calibration, which was based on the MarketScan® data, to stratify the population (by age group for enrollees with HCCs, and within a single group for enrollees with no HCCs), then calculated risk scores for the predicted expenditures to relate them to the average expenditures. To estimate a sample size for each issuer, an average issuer size was estimated based on the total expected insured population and the total expected number of issuers. The average issuer

population containing enrollees with and without HCCs was assumed to be split 20 percent with HCCs and 80 percent without HCCs, consistent with the MarketScan® data.

We will group each issuer's enrollee population into 10 strata based on age group, risk level, and presence of HCCs, as follows:

- Strata 1–3 will include low, medium, and high risk adults with the presence of at least one HCC.
- Strata 4–6 will include low, medium, and high risk children with the presence of at least one HCC.
- Strata 7–9 will include low, medium, and high risk infants with the presence of at least one HCC.
- Stratum 10 will include the No-HCC population, which will not be further stratified by age or risk level, because we assume this stratum has a uniformly low error rate.

We calculated a predicted risk score for each individual in each stratum by dividing the predicted expenditures for that individual by the average predicted expenditures for the entire population. Using these individual predicted risk scores, we calculated the overall average risk score for all individuals in each risk-based stratum. This calculation was performed nine times for the HCC population—once for each of the three risk-based strata within each of the three age groups. We set the minimum risk score for enrollees without HCCs in the tenth stratum.

This method of stratification is similar to that used in the Medicare Advantage risk adjustment data validation program, which divides enrollees into three strata, representing low, medium, and high risk expenditures. Error rates and variances are calculated for each of these strata. In the initial year, before error rate and standard deviation data for the population subject to the HHS-operated risk adjustment program are available, we will use the Medicare Advantage error rates and variances to calculate sample sizes. After the initial year, we will evaluate whether sufficient HHS-operated risk adjustment error rate and standard deviation data are available to calculate sample sizes.

We will use the lowest error rate across all HCC strata as the error rate for the stratum of enrollees without HCCs, and we will use the variance associated with that error rate to calculate the standard deviation of the error for the stratum of enrollees without HCCs. If error rates and variances are smaller than assumed for this stratum, the resulting sampling precision may increase.

Because the Medicare Advantage error rates and variances are not calculated for different age bands, and therefore are available only for three risk-score differentiated subgroups, we will use the same risk score error rates and standard deviation for the age bands for a risk category. Thus, we will use the same risk score error rate and standard deviation assumptions for the adult, child, and infant strata associated with each risk score band. We do not anticipate the expected risk score error rate and variance to be uniform for all age groups; however, in the absence of data, we are making this simplifying assumption. In general, we believe the Medicare Advantage error rates and variances likely overstate the corresponding error rates and assumptions for the HHS risk adjusted population, and therefore, the estimated precision of our error estimates may be understated.

The formulas identified above require data on error rates and standard deviations for the strata, and also a target confidence interval and sampling precision level (or margin of error). For the initial year, as we proposed in the proposed rule, we are finalizing a 10 percent relative sampling precision at a two-sided 95 percent confidence level. That is, we wish to obtain a sample size such that 1.96 [20] multiplied by the standard error, divided by the estimated adjusted risk score, equals 10 percent or less. After actual data are collected from the initial year, we will test and evaluate the data for use in determining the sample size in future years.

Once the overall sample size is calculated, the enrollee count will be distributed among the population based on the second formula above for calculating the sample size of each stratum. Because strata with enrollees with HCCs have a higher standard deviation of risk score error, the overall sample will be disproportionately allocated to enrollees with HCCs (Strata 1–9), helping to ensure adequate coverage of the higher risk portion of the enrollee population.

When data becomes available from the program's first year, we expect to examine our sampling assumptions using actual enrollee data. We anticipate that in the initial 2 years of the risk adjustment data validation program, the stratification design will remain consistent with the design outlined above—nine HCC strata and one No-HCC stratum. However, the specific size and allocation of the sample to each stratum may be refined based on average issuer enrollee risk score distributions. For example, in future years, we are considering using larger sample sizes for larger issuers or issuers with higher variability in their enrollee risk scores, and smaller sample sizes for smaller issuers or issuers with lower variability in their enrollee risk scores. The sampling design may also consist of a minimum and maximum sample size per stratum for each average issuer (large, medium, small) to follow when selecting the sample.

We are finalizing our sampling approach as proposed for the initial 2 years of risk adjustment data validation.

Comment: Several commenters supported reducing the sample size from 300 to 200 enrollees for the initial years of data validation. Commenters supported using sampling experience from the initial years to improve the sampling methodology and target issuer-specific sample sizes in 2016. Other commenters requested that HHS increase the sample size for larger issuers and decrease the sample size for smaller issuers. One commenter requested that we use a nationwide sample to assess error rates for multi-State carriers, while another commenter requested that we combine the risk pools to minimize issuer burden for sample selection. Some commenters did not support the smaller sample size, noting that questionable enrollment data in the initial years may result in erroneous risk scores. One commenter recommended that HHS use a statistically sound method to ensure that there is a proportionate representation of plan metal levels in each issuer sample.

Response: We will use our sampling experience in the initial years of data validation to evaluate how and if we can appropriately establish issuer-specific sample sizes, and whether our sample size is adequate. We believe that lowering the sample size from 300 to 200 will yield a statistically valid sample, while minimizing the burden on all issuers. We also clarify that the enrollee sample totals 200 enrollees per issuer across all risk pools, and not per plan. Our sampling methodology does not separate risk pools within an issuer.

Comment: Commenters generally supported our proposed strata. One commenter suggested that fewer than ten strata are necessary, while another commenter suggested that because our risk adjustment model is calibrated for a standard population, it has significantly lower predictive power when applied to a pediatric-only population.

Response: We believe that the ten strata are appropriate for the initial years of data validation, in order to ensure that the sample targets enrollees

[20] Critical value for the two-sided 95 percent confidence level.

with HCCs of varying ages and health statuses. We intend to use real data as it becomes available to improve our precision in error rate and variance estimation by age and health status.

(ii) Initial Validation Audit

The second stage of the HHS-operated risk adjustment data validation process is the initial validation audit. In this section, we discuss standards and guidelines regarding the qualifications of the initial validation auditor, including conflict of interest standards, standards for the initial validation audit, rater consistency and reliability, and confirmation of risk adjustment errors. As discussed in the white paper and the proposed rule, we considered existing best practices and standards for independent auditors, such as those of Medicare Quality Improvement Organizations and the National Committee for Quality Assurance, when establishing our standards for initial validation auditors.

(1) Initial Validation Auditor

The 2014 Payment Notice established certain standards for the initial validation auditor. In § 153.630(b)(2) and (b)(3), we directed the issuer to ensure that the initial validation auditor is reasonably capable of performing an initial validation audit, and is reasonably free of conflicts of interest, such that it is able to conduct the initial validation audit in an impartial manner with its impartiality not reasonably open to question.

In the white paper, we elaborated on potential options for ensuring that an initial validation auditor meets these criteria, including standardized auditor certification processes and promulgation of best practices. Many commenters sought additional information and guidance regarding initial validation auditor selection and requested that HHS define conflicts of interest between an issuer and the initial validation auditor. In the proposed rule, we proposed the following criteria for assessing conflicts of interest between the issuer and the initial validation auditor:

- Neither the issuer nor any member of its management team (or any member of the immediate family of such a member) may have any material financial or ownership interest in the initial validation auditor, such that the financial success of the initial validation auditor could be seen as materially affecting the financial success of the issuer or management team member (or immediate family member) and the impartiality of the initial validation audit process could reasonably be called into question, or such that the issuer or management team member (or immediate family member) could be reasonably seen as having the ability to influence the decision-making of the initial validation auditor;
- Neither the initial validation auditor nor any member of its management team or data validation audit team (or any member of the immediate family of such a member) may have any material financial or ownership interest in the issuer, such that the financial success of the issuer could be reasonably seen as materially affecting the financial success of the initial validation auditor or management team or audit team member (or immediate family member) and the impartiality of the initial validation audit process could reasonably be called into question, or such that the initial validation auditor or management or audit team member (or immediate family member) could be seen as having the ability to influence the decision-making of the issuer;
- Owners, directors and officers of the issuer may not be owners, directors or officers of the initial validation auditor, and vice versa;
- Members of the data validation audit team of the initial validation auditor may not be married to, in a domestic partnership with, or otherwise be in the same immediate family as an owner, director, officer, or employee of the issuer; and
- The initial validation auditor may not have had a role in establishing any relevant internal controls of the issuer related to the risk adjustment data validation process when HHS is operating risk adjustment on behalf of a State, or serve in any capacity as an advisor to the issuer regarding the initial validation audit.

In addition, we stated in the proposed rule that we were considering establishing standards under which issuers must verify that no key individuals involved in supervising or performing the initial validation audit have been excluded from working with either the Medicare or Medicaid program, are on the OIG exclusion list or, to its knowledge, are under investigation with respect to any HHS programs.

We noted in the proposed rule that we intend to review the initial validation auditor's qualifications and relationship to the issuer to verify that the initial validation auditor is qualified to perform the audit, and that the issuer and initial validation auditor are free of actual or apparent conflicts of interest, including those stated above. We noted that HHS could gather information through external reporting to support that review. Although we remain confident that most issuers will exercise diligence in selecting an initial validation auditor that will be able to comply with HHS audit standards, we intend to monitor the performance of initial validation auditors to determine whether certification or additional safeguards are necessary.

In the proposed rule, we proposed to amend § 153.630(b)(1) to specify that the issuer of a risk adjustment covered plan must provide HHS with the identity of the initial validation auditor, and must attest to the absence of conflicts of interest between the initial validation auditor (or the members of its audit team, owners, directors, officers, or employees) and the issuer (or its owners, directors, officers, or employees). We stated that we considered any individual with a significant ownership stake in an entity such that the individual could reasonably be seen to have the ability to influence the decision making of the entity to be an "owner," and considered any individual that serves on the governing board of an entity to be a "director" of the entity. We stated that we were contemplating beginning the initial validation process at the end of the first quarter of the year following the benefit year, with the issuer's submission of the initial validation auditor's identity. We stated that we expected to identify the enrollee sample for the initial validation audit in the summer of the year following the benefit year, and that we were contemplating requiring delivery of the initial validation audit findings to HHS in the fourth quarter of that year. We included a proposed schedule of the risk adjustment data validation process.

Once the audit sample is selected by HHS, we stated that we expect issuers to ensure that the initial validation audit is conducted in the following manner:

- The issuer would provide the initial validation auditor with source enrollment and source medical record documentation to validate issuer-submitted risk adjustment data for each sampled enrollee;
- The issuer and initial validation auditor would determine a timeline and information-transfer methodology that satisfies the data security and privacy requirements at § 153.630(f)(2), and enables the initial validation auditor to meet HHS established timelines;
- The initial validation auditor would validate the status of each enrollee in the sample in accordance with the standards established by HHS; and
- The initial validation auditor would provide HHS with the final results from

the initial validation audit and all requested information for the second validation audit.

We noted in the proposed rule that we did not propose amending § 153.630(f)(2), and that the issuer would be required to ensure that its initial validation auditor comply with the security standards described at §§ 164.308, 164.310, and 164.312 in connection with the initial validation audit.

We are finalizing these standards as proposed, with certain modifications in response to comments to § 153.630(b)(1). Where we had proposed requiring an attestation from the issuer as to the absence of conflicts of interest with the initial validation auditor on the part of the issuer, we are modifying the conflict of interest attestation requirement in § 153.630(b)(1) so that the issuer must attest to the absence of conflicts of interest with the initial validation auditor to its knowledge, following reasonable investigation. Similarly, where we had proposed requiring an attestation from the issuer as to the absence of conflicts of interest on the part of the initial validation auditor, we are modifying the attestation requirement so that the issuer may attest that it has obtained a representation from the initial validation auditor that to its knowledge, following reasonable investigation, there are no conflicts of interest. We are also including a standard under which an issuer must verify that no key individual involved in supervising or performing the initial validation audit appears on the Office of the Inspector General List of Excluded Individuals and Entities or, to the issuer's knowledge, are under investigation with respect to any HHS program.

Comment: One commenter recommended that HHS provide a pre-certified list of auditors to make it easier for issuers to select an independent entity to perform the initial data validation audit. Another commenter suggested that HHS maintain adequate staff to monitor the performance of issuers and their auditors. Commenters suggested that the initial validation auditor, rather than the issuer, certify that the entity meets the conflict of interest standards, since the issuer may be unaware of all potential conflicts. The commenters suggested that the initial validation auditor attest to an absence of conflict to both HHS and the issuer, and that the issuer attest to the absence of conflicts only on the issuer's side. Several commenters recommended that HHS require attestation of an absence of conflict of interest only from senior management teams of the issuer and the auditor, and permit members of the initial validation audit team to simply disclose any potential conflicts for issuer evaluation, rather than categorically excluding an initial validation auditor. One commenter requested that HHS prohibit vendors that provide risk adjustment services from serving as initial validation auditors.

Response: We believe that members of the initial validation audit team should be subject to the same conflict-of-interest requirements as owners and directors. However, we agree with the commenters that the issuer may not be able to provide the full attestation proposed, and are finalizing a change in our policy in § 153.630(b)(1) so that the issuer is required to attest to the absence of conflicts of interest between the initial validation auditor (or the members of the audit team, owners, directors, officers, or employees) and the issuer (or its owners, directors, officers, or employees), to its knowledge following reasonable investigation, and must attest that it has obtained an equivalent representation from the initial validation auditor.

We do not intend to pre-certify auditors at this time. However, as stated elsewhere in the preamble to this rule, we intend to monitor the performance of initial validation auditors to determine whether additional certification or safeguards are necessary.

Comment: Several commenters suggested that HHS require the initial validation auditor to provide issuers, as well as HHS, with the results of the initial validation audit.

Response: Nothing in our rules prevents the issuer from requiring that the initial validation auditor provide it with the results of the initial validation audit.

(2) Standards for the Initial Validation Audit

In the proposed rule, we proposed that an initial validation audit review of enrollee health status be conducted by medical coders certified after examination by a nationally recognized accrediting agency for medical coding, such as the American Health Information Management Association (AHIMA) or the American Academy of Professional Coders (AAPC). We are finalizing this provision as proposed.

Comment: Several commenters supported requiring nationally accredited medical coders to review an enrollee's health status during an initial validation audit. One commenter recommended that the Practice Management Institute be considered a nationally recognized accrediting agency for medical coding. Another commenter suggested that reviewers receive certification in the specialty area in which they work and by the appropriate specialized accrediting agency. Another commenter supported coding education and clinical training for medical coders, but suggested that HHS should consider other standards, if available, to enhance consistency among auditors.

Response: We will not recognize certification by the Practice Management Institute as certification by a nationally recognized accrediting agency because we do not believe this organization is nationally recognized for the rigor of its coding training and accreditation practices. By contrast, AHIMA and AAPC certification is intended for a broad group of health providers, issuers, and associated industry groups. At this time, while our risk adjustment data validation standards are relatively new, we will not require specialty certification, but we will consider additional standards in the future.

(3) Validation of Enrollees' Risk Scores

An enrollee's risk score is derived from demographic and health status factors, which requires the use of enrollee identifiable information. Thus, in the proposed rule we proposed to add paragraph (b)(6) to § 153.630, to require an issuer to provide the initial validation auditor and the second validation auditor with all relevant information on each sampled enrollee, including source enrollment documentation, claims and encounter data, and medical record documentation from providers of services to enrollees in the applicable sample without unreasonable delay and in a manner that reasonably assures confidentiality and security of data in transmission. We noted that existing privacy and security standards, such as standards under HIPAA and those detailed at § 153.630(f)(2), will apply. This information would be used to validate the enrollment, demographic, and health status data of each enrollee. Only source documentation for encounters with dates of services within the applicable benefit year would be considered relevant. This would require issuers to collect the appropriate enrollment and claims information from their own systems, as well as from all relevant providers (particularly with respect to medical record documentation). We noted that only a very small percentage of an issuer's records containing personally identifiable information (PII) would be made available to auditors as part of the

risk adjustment data validation process, and that similar transmissions are required today for data validation for the Medicare Advantage program. We also proposed to add paragraph (b)(7) to § 153.630, to describe the standards for validating an enrollee's risk score. Under paragraph (b)(7)(i), we proposed that the initial validation auditor would validate information by reviewing plan source enrollment documentation, such as the 834 transaction,[21] which is the HIPAA-standard form used for plan benefit enrollment and maintenance transactions. These enrollment transactions reflect the data the issuer captured for an enrollee's age, name, sex, plan of enrollment, and enrollment periods in the plan. We noted that certain identifying information from these enrollment transactions would be used to ensure that the appropriate medical documentation has been provided. We are finalizing these standards as proposed, with the modification to § 153.630(b)(7)(i) that an enrollee's risk score must be validated through enrollment and demographic data in a manner to be determined by HHS. We have made this change because we are exploring an approach under which we would use an automated data validation process for the enrollment and demographic data. We believe that such an approach could lessen the burden of the data validation process on issuers. We will provide further guidance on this topic in the future. We stated in the proposed rule that the sample audit pool would consist of enrollees with and without risk adjustment eligible diagnoses within eligible dates of service. For each enrollee in the sample with risk adjustment HCCs, the initial validation auditor would validate diagnoses through a review of the relevant risk adjustment eligible medical records. We stated we would consider medical record documentation generated with respect to dates of service that occurred during the benefit year at issue to be relevant for these purposes. For enrollees without risk adjustment HCCs for whom the issuer has submitted a risk adjustment eligible claim or encounter, we would require the initial validation auditor to review all medical record documentation for those risk adjustment eligible claims or encounters, as provided by the issuer, to determine if HCC diagnoses should be assigned for risk score calculation, provided that the documentation meets the requirements for the risk adjustment data validation audits. Documents used to validate all components of the risk score would be required to reflect dates of service during the applicable benefit year. In the initial years of the data validation program, we plan to accept certain supplemental documentation, such as health assessments, to support the risk adjustment diagnosis. We expect to provide additional details on acceptable supplemental documentation in future guidance.[22]

Therefore, we proposed in § 153.630(b)(7)(ii) to require that the validation of enrollee health status (that is, the medical diagnoses) occur through medical record review, that the validation of medical records include a check that the records originate from the provider of the medical services, that they align with the dates of service for the medical diagnosis, and that they reflect permitted providers and services. For purposes of § 153.630, "medical record documentation" would mean: "clinical documentation of hospital inpatient or outpatient treatment or professional medical treatment from which enrollee health status is documented and related to accepted risk adjustment services that occurred during a specified period of time." Medical record documentation would be required to be generated in the course of a face-to-face or telehealth visit documented and authenticated by a permitted provider. We expect to provide additional guidance on telehealth services in future guidance.

In § 153.630(b)(7)(iii), we proposed that medical record review and abstraction be performed in accordance with industry standards for coding and reporting. Current industry standards are set forth in the *International Classification of Diseases, Ninth Revision, Clinical Modification* (ICD–9), or the *International Statistical Classification of Diseases and Related Health Problems, Tenth Revision, 4th Edition* (ICD–10) guidelines for coding and reporting.

We are finalizing these standards as proposed, with the modification to § 153.630(b)(7)(i) discussed above.

Comment: One commenter requested that HHS specify documents other than the "834" plan benefit and enrollment form that could be used to validate demographic data and enrollment information for risk adjustment validation when a plan is not part of a State Exchange. One commenter recommended that HHS adjust its audit standards to rely on medical conditions as described and substantiated in medical claims forms rather than medical records. Several commenters supported our proposal that medical records generated in the course of telehealth encounters be deemed acceptable for risk adjustment data validation, and asked HHS for additional guidance. However, another commenter stated that limiting medical record documentation to face-to-face encounters and telehealth visits would be too restrictive, because of the difficulty in obtaining medical records from providers from prior insurance plans.

Response: HHS will provide further guidance on appropriate sources of plan enrollment data. We believe that the original medical record provides the most complete information on which to assess whether a claim is eligible for risk adjustment. With respect to the challenge of obtaining prior medical documentation when an enrollee changes issuers, we note that the data validation documentation request process for each issuer will be specific to periods during which the issuer reported plan enrollment for the sampled enrollees.

Comment: One commenter stated that the proposed process does not provide adequate recourse for issuers to identify and correct legitimate errors in the provider's medical records. One commenter asked that HHS allow initial validation auditors to use analytic tools to help providers locate overlooked risk adjustment eligible claims.

Response: As part of medical record review, HHS expects that the initial validation auditor will provide the issuer with adequate time to submit accurate medical records from providers. HHS expects that any amendments to medical records will be made in the normal course of business and according to practice protocols. Although we defer to auditors to determine the appropriate tools for their analyses, we encourage issuers to be proactive in identifying risk adjustment eligible claims during the data collection period and, at the same time, to correct for claims identified during data collection that should not be included.

Comment: Another commenter expressed concern that medical

[21] Issuers and State Exchanges use the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3—Benefit Enrollment and Maintenance (834), August 2006, ASC X12N/005010X220, as referenced in § 162.1502, or "834 form" to transmit and update enrollment and eligibility to HHS as often as daily but at least monthly. In Federal operations, HHS and the issuer exchange and update data via this same form.

[22] *See* "HHS-Operated Data Collection Policy FAQ" for a discussion of chart review as an acceptable source of supplemental diagnosis codes. Available at: *https://www.regtap.info/uploads/library/HHS_OperatedDataCollectionPolicyFAQs_062613.* Additional detail will be provided in future guidance.

providers may bear the financial burden of data validation audits.

Response: We appreciate that issuers may require more extensive access to provider medical documentation, and expect issuers and providers to negotiate suitable arrangements, as they do today under similar data validation processes.

(4) Confirmation of Risk Adjustment Errors

In the proposed rule, we noted that the data validation audit processes may identify various discrepancies, many of which will have no impact on an enrollee's risk score. For example, if a medical diagnosis underlying an enrollee's HCC was present on a claim but was not supported by medical record documentation, but the same HCC was supported by the medical record for a different diagnosis, no risk adjustment error would be assessed for the enrollee's HCC. However, if none of the medical record documentation supports a particular HCC diagnosis for an enrollee, we proposed that a risk adjustment error be assessed.

We stated that we consider a risk adjustment error to occur when a discrepancy uncovered in the data validation audit process results in a change to the enrollee's risk score. A risk adjustment error could result from incorrect demographic data, an unsupported HCC diagnosis, or a new HCC diagnosis identified during the medical record review. An unsupported HCC diagnosis could be the result of missing medical record documentation, medical record documentation that does not reflect the diagnosis, or invalid medical record documentation (such as an unauthenticated record or a record that does not meet risk adjustment data collection standards for the applicable benefit year).

We proposed in § 153.630(b)(7)(iv) that a senior reviewer be required to confirm any finding of a risk adjustment error. We proposed to define a senior reviewer as a medical coder certified by a nationally recognized accrediting agency who possesses at least 5 years of experience in medical coding.

Comment: Commenters supported requiring senior reviewers to confirm an enrollee risk adjustment error during the initial data validation audit. However, one commenter suggested increasing the experience required for a senior reviewer from 5 years to 7 years; a different commenter recommended that HHS require only 2 years of experience for the senior reviewer. The commenter said it may be difficult to find enough experienced coders. The commenter suggested permitting junior coders with 2 years of experience to act as senior reviewers for the first 2 years of auditing, after which they could obtain certification in their subject area.

Response: As we discussed in the proposed rule, we believe that once risk adjustment data validation is established, 5 years should be the minimum experience necessary for a senior coder, and that all coders should be certified. We believe that, in the long term, this standard appropriately balances the need to assure that senior coders are sufficiently experienced with the need to assure a reasonable supply of senior coders. However, we recognize that in the initial years of risk adjustment data validation, it may be difficult to find experienced coders. In recognition of this difficulty, and because we believe that by 2016, there will be a sufficient supply of coders with 5 years' experience, we are modifying this provision to permit coders who will have sufficient experience by 2016 to act as senior coders—thus, we provide that senior coders are required to have at least 3 years of experience for risk adjustment data validation for the 2014 and 2015 benefit years.

(5) Review Consistency and Reliability

Validation audits typically include methods of evaluating review consistency and reliability. We believe such processes help to ensure the integrity of the data validation process and strengthen the validity of audit results. In § 153.630(b)(8), we proposed that the initial validation auditor measure and report to the issuer and HHS its inter-rater reliability rates among its reviewers. Such processes measure the degree of agreement among reviewers. In the proposed rule, we set the threshold for the acceptable level of consistency among reviewers at 95 percent for both demographic and enrollment data review, and health status data review outcome. We proposed that reviews be performed using rater-to-standard procedures whereby reviews conducted by reviewers with extensive qualifications and credentials are used to establish testing thresholds or standards for consistency. We are amending § 153.630(b)(8) to provide that, for the initial years of risk adjustment data validation (the 2014 and 2015 benefit years), the initial validation auditor may meet an inter-rater reliability standard of 85 percent for validating review outcomes in accordance with the standards established by HHS.

(iii) Second Validation Audit

The initial validation audit will be followed by a second validation audit, which will be conducted by an auditor retained by HHS to verify the accuracy of the findings of the initial validation audit.

In the proposed rule, we proposed to select a subsample of the initial validation audit sample enrollees for review by the second validation auditor. The second validation auditor would perform the data validation audit of the enrollee subsample, adhering to the same audit standards applicable to the initial validation audit described above, but would only review enrollee information that was originally presented during the initial validation audit. In § 153.630(c), we established standards for issuers of risk adjustment covered plans related to HHS's second validation audit. In § 153.630(b)(4), we established that issuers must submit (or ensure that their initial validation auditor submits) data validation information, as specified by HHS, from their initial validation audit for each enrollee included in the initial validation sample. Issuers must transmit all information to HHS or its second validation auditor in a timeframe and manner to be determined by HHS. The second validation auditor would inform the issuer of error findings based on its review of enrollees in the second validation audit subsample. We will provide additional guidance on the manner and timeframe of these submissions in the future.

As discussed in the white paper and in the proposed rule, we would select the second validation audit small subsample using a sampling methodology that would allow for pair-wise means testing to establish a statistical difference between the initial and second validation audit results. If the pair-wise means test results were to suggest that the difference in enrollee results between the initial validation audit and second validation audit is not statistically significant, the initial validation audit error results would be used for error estimation and calculation of adjustments for plan average risk score. If the test results suggest a statistical difference, the second validation auditor would perform another validation audit on a larger subsample of the enrollees previously subject to the initial validation audit. The results from the second validation audit of the larger subsample would again be compared to the results of the initial validation audit using the pair-wise means test. Again, if no statistical difference were to be

found between the initial validation audit and the second validation audit conducted on the larger subsample, HHS would apply the initial validation audit error results for error estimation using all enrollees selected for the initial validation audit sample. However, if a statistical difference were to be found based on the second validation audit on the larger subsample, HHS would apply the second validation audit error results to modify the initial validation sample, which would be used for the error estimate and calculation of adjustments for the plan average risk score. We stated that we were considering using a 95 percent confidence interval for these pair-wise means tests.

As we discussed in the white paper and the proposed rule, we are considering ways to expedite the second validation audit and the subsequent appeals processes. One possibility would be to begin the second validation audit on those enrollees for which the initial validation audit is complete, even if the entire initial validation audit has not been completed.

We are finalizing the second validation audit approach as proposed.

Comment: Commenters stated that it is unclear how and when enrollees will be included in the expedited second validation audit. Commenters expressed concern that the expedited process would permit the initial validation auditor to review its simplest cases first, negating the benefit of additional time for discussion in an expedited second validation audit. One commenter suggested that it would not be realistic to begin the second validation audit in advance because of the time it would take for the health plan to gather the necessary medical documentation.

Response: We will take commenters' suggestions under consideration when we issue guidance on this process in the future.

(iv) Error Estimation

The fourth stage in the HHS risk adjustment data validation process is error estimation. Upon completion of the initial and second validation audits, HHS will derive an issuer-level risk score adjustment and confidence interval. This adjustment will be used to adjust the average risk score for each risk adjustment covered plan offered by the issuer. HHS intends to provide each issuer with enrollee-level audit results and the error estimates.

In the proposed rule, we proposed to use a two-phase procedure to accept or correct the results of the initial validation audit based on the results of the second validation audit. In phase one, as described above, we would conduct a pair-wise statistical test for consistency between the initial validation and second validation audit results (as described above for second validation audits). In phase two, if we determine that the results of the two audits are inconsistent, we would adjust the initial validation audit results based on the second validation audit results. In the proposed rule, for phase two, we described two options for using second validation audit results to derive an estimate of an overall corrected risk score for each issuer.

Phase One: Consistency Test Between Initial and Second Validation Audit

In phase one, we proposed using a pair-wise statistical test to determine if the initial validation audit sample results should be adjusted using the results of the second validation audit. To illustrate the underlying statistical test, consider the following notations:

$\tilde{x}_i$ is the ith initial validation audit risk score observation in the second validation audit sample of n_{sva} observations;

$\tilde{y}_i$ is the ith second validation audit risk score observation in the second validation audit sample of n_{sva} observations;

d_i is the difference between $\tilde{y}_i$ and $\tilde{x}_i$ within the second validation audit sample;

$\bar{d}$ is the mean of all $d_i$observations within the second validation audit sample; and

S_d is the standard deviation of all $d_i$observations within the second validation audit sample.

Assume an issuer submits enrollment and claims data to its dedicated distributed data environment that are used to compute a set of "original" risk scores. As required by the risk adjustment data validation process, the issuer engages an independent validation auditor, who reviews n_{iva} enrollee records, as sampled by HHS, and validates the original enrollee risk scores.

From the n_{iva} enrollees in the initial validation audit sample, HHS would select a small second validation audit subsample of n_{sva} enrollees. For each second validation audit selected record, HHS calculates the difference, $d_i = \mathcal{Y}_i - \mathcal{X}_i$. HHS would then conduct a pair-wise means test to determine whether the mean difference, $\bar{d}$, is statistically significant (that is, unlikely to be zero). Specifically, HHS would conduct a statistical test to determine if zero (0) is contained within the range, $\bar{d} \pm 1.96\left(\frac{s_d}{\sqrt{n_{iva}}}\right)$. If so, HHS would conclude that there is no statistically significant difference between risk scores determined by the initial and second validation audit processes, and would accept the results of the initial validation audit.

However, if zero (0) is not contained within this range (that is, the difference between $\bar{d}$ and zero is statistically significant), HHS would expand the second validation audit subsample to select a larger subset of n_{iva}, have the second validation auditor review the enrollee files, and again conduct a pair-wise means test using this larger subsample. If the statistical test shows no statistically significant difference, HHS would accept the results of the initial validation audit. If the statistical test shows a statistically significant difference between the initial validation audit and larger subsample second validation audit findings, HHS would conduct phase two to adjust the full initial validation audit sample based on the larger subsample second validation audit findings.

Phase Two: Adjustment to the Initial Validation Audit Sample

In phase two, if the difference between the initial and second validation audits is found to be statistically significant, HHS would utilize the risk score error rate calculated from the larger second validation audit subsample to adjust the full initial validation audit sample, which could in turn be used to adjust the average risk scores for each plan. This approach would adjust the entire initial validation audit sample using a one-for-one replacement for the enrollees reviewed by the second validation audit, and a uniform adjustment for the enrollees that were not.

To illustrate this process, consider the following notations:

M is the total number of enrollees in the risk adjustment covered plans of the issuer;

n_{iva} is the initial validation audit sample size;

n_{sva} is the size of the larger second validation audit subsample;

$\bar{y}_{n_{iva}}$ is the mean of the initial validation audit-adjusted risk scores in the initial validation audit sample n_{iva};

$\bar{y}_{n_{sva}}$ is the mean of the second validation audit-adjusted risk scores in the second validation audit sample n_{sva};

$\bar{x}_{n_{iva}}$ is the mean of the original risk scores in the initial validation audit sample n_{iva};

$\bar{x}_{n_{sva}}$ is the mean of the original risk scores in the second validation audit sample n_{sva};

X_M is the original risk score total across all M records;

$\hat{Y}_{n_{iva}}$ is the projected correct risk score across all M records using the initial validation error rate; and

$$\hat{Y}_{n_{iva}} = \frac{\bar{y}_{n_{iva}}}{\bar{x}_{n_{iva}}} X_M$$

$\hat{Y}_{n_{sva}}$ is the projected correct risk score across all M records using the error rate from the larger second validation audit subsample.

$$\hat{Y}_{n_{sva}} = \frac{\bar{Y}_{n_{sva}}}{\bar{X}_{n_{sva}}} X_M$$

We would undertake the following steps to adjust the risk scores in the initial validation audit samples:

(1) Replace the initial validation audit-adjusted risk scores with the second validation audit-adjusted risk scores in the n_{sva} records that were sampled from n_{iva} (one-for-one risk score adjustment).

(2) Apply a uniform adjustment factor, $\frac{\hat{Y}_{n_{sva}}}{\hat{Y}_{n_{iva}}}$ to the initial validation audit-adjusted risk scores in the (n_{iva}-n_{sva}) records not reviewed by the second validation audit.

Comment: Commenters were supportive of using a pair-wise means test and a larger second validation audit subsample to adjust the initial validation audit sample. One commenter recommended that HHS clarify whether the larger second validation audit subsample will include the small second validation audit sample in the event the second validation audit includes the second, larger review.

Response: The larger subsample will not include the small second validation audit subsample if a larger second validation audit subsample is necessary. However, all enrollees in both the small second validation audit subsample and the larger second validation audit subsample will be used for the pair-wise test and risk score adjustment, if applicable. We are finalizing this error estimation process as proposed.

Adjusted Risk Score Projections

The results of the initial or second validation audits will be used as the basis for projecting a corrected risk score for each issuer's population. The full initial validation audit sample of 200, whether the initial validation audit sample has been adjusted or not, will be used to calculate adjusted risk score projections. In the proposed rule, we proposed performing the projections described above on a stratum-by-stratum level, weighted to achieve an estimate of the corrected risk score for each issuer.

We proposed to use a stratified separate ratio estimator[23] to estimate the corrected average risk score for each issuer. To compute the stratified separate ratio estimator, HHS would first extrapolate the total correct risk score within each stratum, then sum the stratum-specific projected correct risk scores for all strata, with the total sum divided by the total enrollee count to arrive at the corrected average risk score. The projected risk score error would then be calculated as the difference between the recorded average risk score across the entire population and the point estimate.

The stratified separate ratio estimator of the total correct risk score would be calculated using the following equation:

[23] For a discussion of stratified separate ratio estimators, *see* Cochran, William G., *Sampling Techniques*, third edition, John Wiley & Sons, 1977, at 164.

$$\hat{Y}_R = \sum_{h=1}^{H} \frac{\bar{y}_h}{\bar{x}_h} X_h$$

Where:

$\hat{Y}_R$ is used to estimate the correct total risk score;

$\bar{y}_h$ is the sample mean of the correct risk score in stratum h;

$\bar{x}_h$ is the sample mean of the original risk score in stratum h;

X_h is the total sum of the original risk score in stratum h; and

H is the total number of strata.

$\hat{Y}_R$ would then be normalized by the enrollment count to derive a corrected average risk score for the issuer.

To estimate the variance of the point estimate, HHS would first estimate the variance within each stratum and then sum the stratum-specific variances for all strata. As noted above, the point estimate and variance of the point estimate would be calculated using the full initial validation audit sample of 200, whether the initial validation audit sample has been adjusted or not. The estimated variance of the stratified separate ratio estimate for the correct total risk score would be calculated as follows:

$$\text{Variance } (\hat{Y}_R) = \sum_{h=1}^{H} \left[\frac{N_h^2 \left(1 - \frac{n_h}{N_h}\right)}{n_h (n_h - 1)} \left(\sum_{i=1}^{n_h} y_{ih}^2 + \hat{R}_h^2 \sum_{i=1}^{n_h} x_{ih}^2 - 2\hat{R}_h \sum_{i=1}^{n_h} y_{ih} x_{ih} \right) \right]$$

Where:

n_h is the number of enrollees sampled in stratum h;

N_h is the population frequency in stratum h;

y_{ih} is the corrected risk score for the ith sampled enrollee in stratum h;

x_{ih} is the original risk score for the ith sampled enrollee in stratum h; and

$$\hat{R}_h = \frac{\sum_{i=1}^{n_h} y_{ih}}{\sum_{i=1}^{n_h} x_{ih}}$$

The square root of the estimated variance is the standard error (SE).

We proposed to use the issuer's corrected average risk score to compute an adjustment factor, based on the ratio between the corrected average risk score and the original average risk score that could be applied to adjust plan average risk for all risk adjustment covered plans within the issuer. We considered two options for applying the adjustment factor. Under the first option, we considered directly applying an adjustment factor to all of the issuer's risk adjustment covered plans. Under the second option, we considered applying this adjustment only if the corrected average risk score and the recorded average risk score are statistically different. We are finalizing the second option, under which a critical parameter of the statistical test is the target confidence interval, which determines the stringency of the test. In the proposed rule, we considered performing the statistical test at the 90, 95, or 99 percent confidence interval. As we noted in the proposed rule, the OIG performs certain similar data validation tests using a 90 percent confidence interval, while the Medicare Advantage risk adjustment data validation program uses a 99 percent confidence interval.

We are finalizing our proposal to apply an adjustment factor only if the corrected average risk score and recorded risk score are statistically different, using a 95 percent confidence interval. We note that we will use this approach with a 95 percent confidence interval in the initial years of the risk adjustment data validation program but will consider using other error estimation approaches and statistical

tests as risk adjustment data becomes available. Among the approaches that we may consider for future years would be an approach under which risk scores would be corrected only if a statistically significant difference in risk scores was demonstrated, but a more pronounced risk score adjustment would be applied.

Comment: Commenters generally supported applying an adjustment factor only if the corrected average risk score and recorded risk score are statistically different. However, a few commenters supported using a 99 percent confidence interval instead of the proposed 95 percent confidence interval. One commenter recommended using both a 90 percent and a 95 percent confidence interval but having CMS retain the discretion whether to apply an adjustment factor if statistical difference is discovered under the 90 percent confidence interval but not the 95 percent confidence interval. One commenter also recommended that the risk scores for enrollees without HCCs only be adjusted upward, not downward, since enrollees without HCCs are assigned the lowest error rate from among enrollees with HCCs.

Response: We believe that a 99 percent confidence interval could lead to under correction of bias in risk scores, and therefore, are finalizing a 95 percent confidence interval. We believe that this lower confidence interval will encourage issuers to correct practices that may lead to errors in the data validation process. We note that the risk scores of enrollees without HCCs may be adjusted upward or downward based on the review of demographic and medical documentation. For example, if an enrollee's age was incorrectly recorded, validation of that data could change the enrollee risk score, even if the enrollee had no HCCs.

Error Estimation Example

To illustrate the corrected average risk score and error estimation process described above, assume that a sample of 200 enrollees is selected for initial validation audit review for a particular issuer. From this sample, assume that a subsample of 20 enrollees is selected for second validation audit review. Assume the issuer's average recorded population risk score is 1.60 and the projected correct population risk score from the sample of 200 is 1.40, with a two-sided 95 percent confidence interval of 1.30 to 1.50.

The first step in the error estimation process will determine if the initial validation audit results should be corrected based on the second validation audit review or accepted without adjustment. We will perform a pair-wise means test to compare the projected risk scores for the sample of 200 enrollees and the subsample of 20 enrollees.

For this example, assume that the statistical test fails (that is, there is a statistically significant difference between the projected risk scores in the sample of 200 and the subsample of 20).[24] We will then select an expanded subsample from the original sample of 200 enrollees. Assume that the larger subsample is a sample of 80 enrollees. Following selection of the larger second validation audit subsample, we will perform the pair-wise means test again. Assume the test fails again (that is, the pair-wise means test shows a statistically significant difference in the projected risk scores between the initial validation audit and the second validation audit for the sample of 100 enrollees—by assumption, 20 from the first subsample and 80 from the second subsample—selected in the second data validation audit). We will conclude that the risk scores in the sample of 200 enrollees need to be adjusted based on the results of the second validation audit.

In the second step of error estimation, HHS will adjust the risk scores in the sample of 200 using a one-for-one replacement for the risk scores of the 100 enrollees reviewed by the second validation auditor, and a uniform adjustment for the other enrollees in the initial validation audit sample. The one-for-one replacement will replace the risk scores calculated based on initial validation audit findings, with the risk scores calculated based on the second validation audit findings for the 100 enrollees. The remaining 100 enrollees that were not included in the second validation audit subsample will be adjusted based on the ratio of two projections: (1) The projected correct population risk score using the second validation audit findings in the subsample of 100 (assume this projected risk score is 1.50, with a two-sided 95 percent confidence interval of 1.30 to 1.70); divided by (2) the projected correct population risk score using the initial validation audit findings for the sample of 200 enrollees (equal to 1.40 based on the assumption noted above). The adjustment ratio is equal to 1.07 = 1.50/1.40. Therefore, the risk scores of the remaining 100 enrollees not included in the second validation audit subsample will be increased by 7 percent.

[24] If the test passes, then no adjustments would be made to the sample of 200, and the projected results from this sample would be used to adjust average plan liability risk scores.

At that point, the adjusted average risk score of the initial validation sample would be calculated to derive a projected correct population average risk score for the issuer that would be compared to the issuer's recorded average risk score. The plan average risk scores for the issuer would then be adjusted, based on the ratio between the corrected average risk score and the recorded average risk score, as described above, if the issuer's recorded average risk score and the projected correct average risk score are significantly different.

(v) Appeals

We anticipate that the risk adjustment data validation appeals process will occur annually, beginning in the spring of the year in which the error rate will be applied to adjust risk scores and affect risk adjustment payments and charges. Because we are not applying error rates to adjust payments and charges for the initial 2 years of the risk adjustment program, the first year for which error rates will be applied to payments and charges will be 2016. These error rates will be used as the basis for adjustments to the payment transfers for 2017, which will take place in spring 2018. We anticipate the appeals process will begin in the spring of 2018, prior to the 2017 payment transfers. We will provide additional guidance on the appeals process and schedule in future rulemaking.

Comment: Commenters supported beginning the appeals process with the 2016 payment year. They also recommended leveraging existing appeals processes where applicable and providing at least 60 days to file an appeal. We received comments recommending that the individual reviewing the appeal be an independent entity with an appropriate level of coding, medical documentation, and audit experience. One commenter also recommended that the scope of the appeals be expanded to include initial validation audit results.

Response: We will provide additional guidance on the appeals process and schedule in future rulemaking.

(vi) Payment Transfer Adjustments

Risk adjustment payment transfer amounts will be based on adjusted plan average risk scores. The data validation audits will be used to develop a risk score error adjustment for each issuer, as described above. Each issuer's risk score adjustment will be applied to adjust the plan average risk score for each of the issuer's risk adjustment covered plans. This adjustment will be applied on a prospective basis

beginning with the risk adjustment data for benefit year 2016 (that is, the adjustments would take effect in 2018, during payment transfers for 2017). Because an issuer's adjusted plan average risk score is normalized as part of the risk adjustment payment calculation, the effect of an issuer's risk score error adjustment will depend upon its magnitude and direction compared to the average risk score error adjustment and direction for the entire market.

We are considering reporting the following summary findings to issuers for the initial 2 years of the program:

- State- or market-wide error rates.
- Issuer error rates.
- Initial validation audit or error rates.
- Projected financial impact of the proposed risk adjustments, as determined by the initial and second validation auditors.

The 2-year interval before risk adjustment data validation adjustments are applied to risk scores and affect payments and charges will provide initial validation auditors and issuers the opportunity to reform existing processes prior to the implementation of HHS payment transfer adjustments for the 2016 benefit year. We believe that the reports described above will help issuers and initial validation auditors better understand the likely effects of the risk adjustment data validation program in States where HHS operates risk adjustment. We are finalizing these provisions as proposed.

Comment: Commenters requested that HHS provide issuers with reports of their risk scores, as well as market risk scores pre- and post-audit. Commenters also requested that HHS provide issuers with State and market-wide error rates, issuer error rates, initial validation audit error rates, and the projected financial impact of the proposed risk adjustment, as determined by auditors. One commenter requested that HHS publicly report issuer error rates both nationally and for each State for each issuer. Another commenter was opposed to the public reporting of issuer error rates and requested that they be provided individually to issuers.

Response: We plan to publicly report aggregate summaries at the State, market, and initial validation auditor level. However, we will assess whether to publicly report initial validation auditor-level results. We plan to provide issuer-specific reports to the issuer and the initial validation auditor. We will provide further details on the reports in future guidance.

(vii) Oversight

The second final Program Integrity Rule outlined selected oversight provisions related to the premium stabilization programs, such as maintenance of records, sanctions for failing to establish a dedicated distributed data environment, and the application of a default risk adjustment charge to issuers in the individual and small group markets that fail to provide data necessary for risk adjustment. We proposed expanding on these provisions to include oversight related to risk adjustment data validation when HHS operates risk adjustment on behalf of a State, and are now finalizing those proposals.

Section 153.620 provides that an issuer that offers risk adjustment covered plans must comply with any data validation requests by the State or HHS on behalf of the State, and that an issuer that offers risk adjustment covered plans must also maintain documents and records, whether paper, electronic, or in other media, sufficient to enable the evaluation of the issuer's compliance with applicable risk adjustment standards, and must make that evidence available upon request to HHS, OIG, the Comptroller General, or their designee, or in a State where the State is operating risk adjustment, the State or its designee to any such entity.

Based on our authority under section 1321(c)(2) of the Affordable Care Act, we proposed in § 153.630(b)(9) that, when HHS operates risk adjustment on behalf of a State, an issuer of a risk adjustment covered plan that does not engage an initial validation auditor within the timeframe specified by HHS of the year following the benefit year, or that otherwise does not arrange for a risk adjustment initial validation audit that complies with applicable regulations, may be subject to CMPs. We stated that we intend to apply the proposed sanction so that the level of the enforcement action would be proportional to the level of the violation. While we reserve the right to impose penalties up to the maximum amounts proposed in § 156.805(c), as a general principle, we would work collaboratively with issuers to address problems in conducting the risk adjustment data validation process. In our application of the sanction, we would take into account the totality of the issuer's circumstances, including such factors as an issuer's previous record (if any), the frequency and level of the violation, and any aggravating or mitigating circumstances. We stated that our intent is to encourage issuers to address non-compliance and not to severely affect their business, especially where the issuer demonstrates good faith in monitoring compliance with applicable standards, identifies any suspected occurrences of non-compliance, and attempts to remedy any non-compliance.

We proposed in § 153.630(b)(10) to assign a default risk adjustment charge to an issuer that does not hire an initial validation auditor or that otherwise does not submit initial validation audit results that comply with the regulations in subpart G and subpart H of part 153. We stated that we were considering whether this charge should be the same as the default charge in § 153.740(b) for failure to comply with data requirements, should be based on a default error rate, or should be calculated based on some other methodology. We are finalizing a default risk adjustment charge that will be calculated in the manner provided for in § 153.740(b), which is discussed elsewhere in this final rule.

Issuers may request technical assistance from HHS at any stage of the risk adjustment data validation process. HHS may also offer such assistance directly if we become aware of technical issues arising at any time during the risk adjustment data validation process. We plan to provide further assistance and clarification around the risk adjustment data validation process through a range of vehicles, including additional guidance, training materials, webinars, or user group calls.

Based on the comments received, we are finalizing a default risk adjustment charge at § 153.630(b)(10) for issuers that do not conduct the initial validation audit.

Comment: Commenters agreed with our proposal to impose CMPs if issuers do not engage an auditor within the specified timeframe, do not otherwise arrange for an initial validation audit that complies with applicable regulations, or are repeatedly out of compliance with risk adjustment data validation requirements, including not providing the initial and second validation audit auditors with information. One commenter supported assigning the issuer the highest possible default error rate that guarantees additional charges as a percent of premium or reduced payments as a percent of premium. Another commenter recommended that HHS enforce the initial validation audit requirement with a significant penalty for issuers that do not conduct the initial validation audit, while imposing lesser penalties if the initial validation audit results are not submitted in a timely manner.

Response: We agree that penalties should correspond to the severity of an issuer's non-compliance. We also agree with the commenter who suggested that HHS enforce the initial validation audit requirement with a significant penalty such as the default risk adjustment charge for issuers that do not conduct the initial validation audit, while imposing CMPs if the initial validation audit results are not submitted in a timely manner. As we noted previously and in the proposed rule, we intend to apply any proposed sanction so that the enforcement action would be proportional to the level of the violation.

(viii) Data Security

We recognize that the risk adjustment data validation process outlined here will require the transmission of sensitive data and documents between an issuer and the initial and second validation auditors. HHS takes seriously the importance of safeguarding protected health information and PII. As outlined in the white paper and the proposed rule, we believe that it will be necessary to specify standards for safeguarding this information through proper information storage and transmission methods.

We note that § 153.630(f)(2) currently requires an issuer to ensure that it and its initial validation auditor comply with the HIPAA information security standards described at §§ 164.308, 164.310, and 164.312 (HIPAA Security Rule) in connection with the initial validation audit, the second validation audit, and any appeals. In addition to these requirements, we continue to consider defining standards and expectations that would apply to issuers and initial and second validation auditors pertaining to data security, management, and transmission. These standards could require systems to safeguard and encrypt data "at rest" and "in transit," and to authenticate identities of users. They could also prohibit auditors from using or disclosing the information they receive for any purpose other than the audit and oversight. Similar standards have been implemented under the Medicare Advantage risk adjustment data validation process. We will address these issues and the treatment of initial and second validation auditors under HIPAA in future rulemaking or guidance.

Comment: Several commenters stated that compliance with the current provisions of the HIPAA Security Rule by issuers and their auditors will effectively safeguard the transmission of sensitive data and documents between the issuer and the initial and second validation auditors. One commenter recommended that HHS adopt additional data security standards. One commenter requested that HHS base data security standards on applicable Medicare Advantage risk adjustment data validation standards, with specific penalties for breaches.

Response: Because of the sensitive nature of the risk adjustment data validation data, we recognize that it is essential that HHS have in place the proper standards and safeguards to ensure data security and privacy protections. We are continuing to evaluate the sufficiency of the current HIPAA Security Rule provisions, as well as the potential effectiveness of requiring additional data security, management, and transmission safeguards, including penalties for breaches. We intend to clarify our data security approach in future rulemaking or guidance.

(ix) Implementation Timeline

For the 2014 benefit year, we expect to implement risk adjustment data validation activities in early 2015. Implementation activities will begin with issuers submitting the identity of their initial validation auditor to HHS in accordance with § 153.630(b)(1). In the spring of 2015, we intend to utilize the data submitted by issuers for risk adjustment payments and charges and apply the sampling methodology described above to select the audit sample for each issuer for the initial validation audit. During the same timeframe, we will train issuers and initial validation auditors on the risk adjustment data validation process and the applicable standards for performing the initial validation audit, which will begin in the summer of 2015. Once the initial validation audit has concluded in the fall of 2015, HHS will begin the second validation audit process, which will continue into 2016. Risk adjustment data validation implementation activities for the 2014 benefit year data will conclude in 2016 after distribution of HHS findings to issuers, processing of appeals, and estimation and reporting of final risk scores. Since the 2014 benefit year is the first year of implementation of risk adjustment data validation, we expect to report on lessons learned from these activities, and to use this information to improve the risk adjustment data validation process.

We expect that risk adjustment data validation implementation activities will follow a similar schedule for each subsequent benefit year. The 2016 benefit year will be the first year when payments and charges are adjusted. Those adjustments will occur after the conclusion of risk adjustment data validation activities for the 2016 benefit year, in the summer of 2018.

Comment: Commenters supported the reporting of lessons learned from the initial year risk adjustment data validation activities. One commenter was concerned that the initial 2-year time period would be insufficient to analyze error rates or determine the appropriate sampling approach. Several commenters suggested that issuers would need to receive audit results more promptly to be able to improve their processes for the 2017 plan year. One commenter urged HHS to begin the risk adjustment data validation process as soon as possible.

Response: We believe that the initial 2 years of risk adjustment will be sufficient to analyze error rates, determine a more effective sampling approach, and allow issuers to gain experience with the risk adjustment data validation process in time for payment adjustments to occur for the 2016 benefit year. Though final results for the 2014 benefit year will not become available until 2016, we believe issuers should be able to adjust their 2017 processes in time.

e. HHS Audits of Issuers of Risk Adjustment Covered Plans

We proposed in § 153.620(c) that HHS or its designee may audit an issuer of a risk adjustment covered plan, when HHS operates risk adjustment on behalf of a State, to assess the issuer's compliance with the requirements of subparts G and H of 45 CFR part 153. The issuer would also be required to ensure that its relevant contractors, subcontractors, or agents cooperate with the audit. We noted that we anticipate conducting targeted audits of issuers of risk adjustment covered plans informed by, among other criteria and sources, the data provided to HHS through the dedicated distributed data environment and any previous history of noncompliance with these standards. These audits would focus on aspects of the risk adjustment program that are not validated through the risk adjustment data validation program, such as whether a plan was a risk adjustment covered plan.

We also proposed that if an audit results in a finding of material weakness or significant deficiency (as these terms are defined in GAAS issued by the American Institute of Certified Public Accountants, and Government Auditing Standards issued by the Government

Accountability Office (GAO) [25]) with respect to compliance with any requirement of subparts G or H of 45 CFR part 153, the issuer would be required to: (i) Within 30 calendar days of the issuance of the final audit report, provide a written corrective action plan to HHS for approval; (ii) implement that corrective action plan; and (iii) provide to HHS written documentation of the corrective actions once taken. We proposed that if HHS determines as the result of an audit that the issuer of the risk adjustment covered plan was required to pay additional risk adjustment charges or received risk adjustment payments to which it was not entitled, we may require the issuer to pay such amounts to the Federal government.

We are finalizing the audit provisions as proposed.

Comment: One commenter asked that if an audit identifies repeated noncompliance with the risk adjustment standards and the issuer fails to correct such issues, including failing to implement a corrective action plan, the issuer should be subject to a default risk adjustment charge or CMPs.

Response: Under § 153.620(c), an issuer of a risk adjustment covered plan must provide and implement a corrective action plan to rectify any material weakness or significant deficiency identified by HHS through an audit. Enforcement remedies are provided with respect to the risk adjustment program under § 153.740 when an issuer of a risk adjustment covered plan fails to comply the data requirements in §§ 153.700 through 153.730 or §§ 153.610 through 153.630. Enforcement remedies may be available through other Federal statutes, such as the False Claims Act, as well. While § 153.620(c) does not provide specific remedies for the failure to implement a corrective action plan, we note that HHS will consider the totality of circumstances in assessing penalties for non-compliance with risk adjustment standards under § 153.740, including those that occur in connection with a corrective action plan.

Comment: One commenter suggested that when an audit results in issuers owing risk adjustment, reinsurance, or risk corridors charges, those funds should be paid into the applicable program and, where applicable, distributed pro rata to issuers of eligible plans in the program. The commenter further suggested that any reinsurance deficiencies identified and rectified after the program has ended should be directed to the risk adjustment program.

Response: As we stated in the proposed rule, if HHS determines as the result of an audit that an entity or issuer was required to pay risk adjustment, reinsurance, or risk corridors charges, HHS has the authority to require the entity or issuer to pay such amounts to the Federal government. We will address the distribution of funding deficiencies, including those identified after a temporary program has ended, in future rulemaking.

Comment: We received a number of comments regarding audit protocols and procedures applicable to the premium stabilization programs. In order to minimize the number and scope of data requests that issuers must respond to, commenters encouraged HHS to identify data elements, sample sizes, and other aspects of the audits in advance, and to streamline and coordinate data requests, given the overlap in data elements supporting the premium stabilization programs and the MLR program. Commenters suggested centralized audits so that auditors can consolidate data requests and follow-up requests for information. Commenters also encouraged HHS to work with States, issuers, contributing entities, and other stakeholders in advance of issuing data requests for audits. Additionally, commenters encouraged HHS to provide significant lead time for data collection and submission, and suggested that HHS limit its audits to samples of data when possible and expand those sample audits only upon a finding of material non-compliance. Commenters also suggested that HHS limit issuer audits to one per year.

Response: As stated in the proposed rule, to reduce the burden on issuers and HHS, to the extent practical, we intend to coordinate any audits of issuers and contributing entities with related audits of Exchange financial programs and premium stabilization programs, in order to limit the number of potential audits that an organization would experience. We intend to provide further details on the audit program, including timelines, procedures, and substantive requirements, in future rulemaking and guidance. We will consider the comments we received to this proposed rule and further feedback from stakeholders to ensure that our audit program is transparent and effective.

Comment: Some commenters asked that HHS perform audits from a centralized location, with no on-site audits.

Response: While we reserve the right to conduct on-site audits, as noted above, we intend to provide further details on the audit program in future rulemaking and guidance.

f. State-Submitted Alternate Risk Adjustment Methodology

For 2015, we are recertifying the alternate risk adjustment methodology submitted by Massachusetts and certified in the 2014 Payment Notice (78 FR 15439–15452). We are not certifying any other alternate risk adjustment methodologies for 2015.

3. Provisions and Parameters for the Transitional Reinsurance Program

The Affordable Care Act directs that a transitional reinsurance program be established in each State to help stabilize premiums for coverage in the individual market from 2014 through 2016. In the 2014 Payment Notice, we expanded on and modified the standards set forth in subparts C and E of the Premium Stabilization Rule, and established the reinsurance payment parameters and a uniform contribution rate for the 2014 benefit year. In this final rule, we finalize provisions from the proposed rule, including: additional standards regarding reinsurance contributions, the 2015 reinsurance payment parameters and uniform contribution rate, modifications to the 2014 reinsurance payments parameters, and certain oversight provisions for the reinsurance program.

a. Major Medical Coverage

Section 1341(b)(3)(B)(i) of the Affordable Care Act states that "the contribution amount for each issuer [must] proportionally reflect each issuer's fully insured commercial book of business for all major medical products . . ." To provide additional clarification for contributing entities, we proposed to define "major medical coverage" in § 153.20 to mean health coverage for a broad range of services and treatments provided in various settings that provides minimum value in accordance with § 156.145. We noted in the proposed rule that this definition of major medical coverage only applies for the purpose of determining reinsurance contributions under section 1341 of the Affordable Care Act.

We are finalizing this provision as proposed, with one modification—we are modifying the definition of major medical coverage to include a specific reference to catastrophic plans and

[25] *See* Government Auditing Standards (2011 Revision), available at: *http://www.gao.gov/yellowbook*. For public companies, the Public Company Accounting Oversight Board (PCAOB) sets audit standards. *See http://pcaobus.org/Standards/Auditing/Pages/default.aspx*. For non-public companies, the AICPA sets audit standards. *See http://www.aicpa.org/Research/Standards/AuditAttest/Pages/SAS.aspx*.

individual and small group market plans subject to actuarial value requirements under § 156.140.

Comment: Several commenters supported our proposed definition of major medical coverage, stating that the reference to minimum value is a reasonable method to provide a consistent definition for major medical coverage. Other commenters asked that we exclude the reference to minimum value and continue to classify fully insured major medical coverage as that which provides hospitalization and medical services, or retain the definition of major medical coverage as it was defined in the preamble to the 2014 Payment Notice (78 FR 15456). One commenter stated that coverage before 2014 was not evaluated for minimum value and retroactive testing would be difficult to implement, administratively burdensome, difficult to audit, and that this definition could exclude a fairly large population from reinsurance contributions. Another commenter suggested that minimum value is confusing because it is not a concept that generally applies to individual health coverage and is only relevant for determining whether employer-sponsored coverage provides minimum value. One commenter noted that because the safe harbor method of calculating minimum value has not yet been finalized, minimum value cannot yet be determined.

Response: We believe that codification of this definition of major medical coverage will help issuers and group health plans more accurately determine their reinsurance contribution obligations. As noted in the proposed rule, we believe that minimum value is a reasonable way to clarify the definition of major medical coverage and reduce uncertainty as to whether reinsurance contributions are required of certain unique plan arrangements. In addition, we believe that the concept of minimum value will be familiar to issuers and group health plans, and believe that the minimum value calculator will enable the calculation of minimum value with minimal burden, regardless of when the coverage was first offered. In the event that the minimum value calculator is unsuitable for use in determining whether a particular plan provides minimum value (and, therefore, major medical coverage), the contributing entity may seek certification by an actuary consistent with § 156.145(a)(3) to establish whether the plan provides minimum value.

Comment: One commenter asked that we include in the definition of major medical coverage any coverage subject to the actuarial value requirements because this would eliminate the need for plans subject to actuarial value requirements to also calculate minimum value.

Response: We agree with the commenter that this additional clarification would be helpful to eliminate this unneeded complexity, and are therefore finalizing a definition of major medical coverage to include explicit references to catastrophic plans and individual and small group market plans subject to the actuarial value requirements under § 156.140. As noted in the proposed rule (78 FR 72340), the minimum value standards established under 45 CFR 156.145 deem any coverage that meets any of the levels of coverage requirements described in 45 CFR 156.140 to satisfy minimum value requirements. The levels of coverage, in turn, are determined through calculation of AV between 60 to 90 percent. As such, plans that meet the AV requirements in accordance with 45 CFR 156.140 would not need to also calculate minimum value. We further note that catastrophic plans, as well as coverage offered in the individual and small group markets that are subject to the Affordable Care Act AV requirements, would be considered part of a contributing entity's "commercial book of business." Therefore, contributing entities must make reinsurance contributions on behalf of their enrollees with catastrophic coverage, as well as individual market coverage and small group coverage subject to the AV requirements under 45 CFR 156.140, absent another exception in § 153.400.

Comment: One commenter suggested that HHS clarify that short-term limited duration insurance, which is excluded from the definition of "individual health insurance coverage" under section 2791(b)(5) of the PHS Act,[26] is not major medical coverage and is therefore not required to make reinsurance contributions.

Response: In general, section 1341(b)(3)(B)(i) of the Affordable Care Act requires reinsurance contributions for "major medical coverage" that is considered to be part of a "commercial book of business," absent an applicable exemption. We are interpreting the term "major medical coverage" solely in the context of the obligation under the Affordable Care Act to make reinsurance contributions. The question of whether coverage is subject to the rules that apply to "individual health insurance coverage" is separate from the question of whether it is "major medical coverage" for purposes of reinsurance contributions.

As we noted in the preamble to the 2014 Payment Notice (78 FR 15456), for purposes of whether a reinsurance contribution is required, we interpret the term "major medical coverage" in terms of the scope and extent of the coverage offered, not in terms of what other Federal requirements may apply to the coverage. Specifically, in the 2014 Payment Notice, we indicated that we interpreted "major medical coverage" to be coverage of a wide range of services not limited in scope (for example, vision or dental coverage) or extent (for example, coverage with very low annual dollar limits). Therefore, reinsurance contributions would be required with respect to a contributing entity's enrollees in a short-term limited duration plan to the extent the plan provides "major medical coverage," as we have interpreted that term. In this final rule, we are adopting as final the language in proposed § 153.20 that sets forth a specific standard for implementing our interpretation of "major medical coverage," as set forth in the 2014 Payment Notice. Specifically, under § 153.20, coverage will be considered "major medical coverage" for reinsurance contribution purposes if it covers a wide range of services, is not limited in scope, and provides a level of coverage that meets the minimum value test under § 156.145. While we are finalizing this standard in this final rule, because it implements our interpretation of "major medical coverage" as set forth in the 2014 Payment Notice, this standard will be applied in determining a contributing entity's reinsurance contribution liability for the 2014, 2015, and 2016 benefit years.

We recognize that the non-standard features of a short-term limited duration plan may make the minimum value calculator unsuitable for use with the plan in determining whether the plan provides minimum value (and, therefore, "major medical coverage"). In such an event, the contributing entity may seek certification by an actuary consistent with § 156.145(a)(3) to establish whether the plan provides minimum value.

b. Self-Administered, Self-Insured Plans

Following comments submitted with respect to the 2014 Payment Notice and the proposed Program Integrity Rule, we proposed to modify the definition of a

[26] Section 2791(b)(5) of the PHS Act provides: "The term "individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance." Available at: *http://www.nadp.org/Libraries/HCR_Documents/phsa027.sflb.ashx.*

"contributing entity" for the 2015 and 2016 benefit years to exclude self-insured group health plans that do not use a third party administrator (TPA) in connection with the core administrative functions of claims processing or adjudication (including the management of internal appeals) or plan enrollment. The preamble to the proposed rule discussed how section 1341(b) of the Affordable Care Act can reasonably be interpreted in more than one way with respect to whether a self-insured, self-administered plan is a contributing entity. The proposed modification recognized that some self-insured group health plans, which we believe would generally not be considered to be using the core services of a TPA, may use third parties for ancillary administrative support, and we noted that we would consider these plans to be self-administered for purposes of the reinsurance program. For purposes of the definition of "contributing entity," we proposed to consider a TPA to be, with respect to a self-insured group health plan, an entity that is not under common ownership or control with the self-insured group health plan or its sponsor that provides administrative functions to the self-insured group health plan in connection with the core administrative services noted above. We sought comment on this definition, and whether certain types of service providers should be considered a TPA for these purposes.

In addition, we sought comment on whether the core administrative functions are the appropriate criteria for this revised definition, and what other administrative functions, such as medical management services, provider network development, or other support tasks, should be considered in determining whether a self-insured group health plan uses a TPA. We also sought comment on whether certain benefits or services, such as pharmaceutical benefits or behavioral health benefits, or a *de minimis* or small percentage of all benefits and services, may be performed by an unaffiliated service provider, which benefits or services should be excluded, and how such a *de minimis* amount or small percentage should be measured.

We are finalizing the proposed definition of "contributing entity" as proposed, with minor modifications to permit the use of unrelated third parties for provider network development and related services, and to provide for a *de minimis* exception.

Comment: Some commenters agreed with the proposed exemption, and stated that it had adequate statutory support and also accurately reflected Congressional intent. Some commenters urged an expanded exemption. Some commenters disagreed with the proposed exemption as not required or supported by the statute, inconsistent with HHS's prior position on the issue, or not supported by a clear policy rationale.

Response: Section 1341(b)(1)(A) of the Affordable Care Act can reasonably be interpreted in more than one way with respect to the applicability of reinsurance contributions to self-insured, self-administered plans. After receipt of comments submitted in response to the 2014 Payment Notice and the proposed Program Integrity Rule, we reconsidered this issue. Following this in-depth review, our view is that the better reading of section 1341 is that a self-insured, self-administered plan should not be a contributing entity, but in order to avoid disruption to contributing entities, we proposed to retain the prior definition of contributing entity for the 2014 benefit year. Section 1341(b)(1)(A) of the Affordable Care Act states that health insurance issuers and TPAs on behalf of group health plans are required to make reinsurance contributions, but does not refer to self-insured, self-administered plans. The provision's reference to group health plans administered by TPAs, coupled with the omission of self-insured, self-administered plans, supports the proposed exemption. We also note that section 1341 of the Affordable Care Act supports the distinction between self-insured, self-administered plans and self-insured plans that use a TPA, since sections 1341(b)(1) and (b)(3)(B)(i) specifically refer to self-insured plans with TPAs and are silent as to self-insured, self-administered plans. Further support for this reading is found under section 1341(b)(3)(B) of the Affordable Care Act and § 153.400(a)(1)(ii), which provide that reinsurance contributions are to reflect a "commercial book of business." While a group health plan administered by a TPA would normally be considered part of a "commercial book of business," a self-insured, self-administered plan would not normally be considered part of an entity's "commercial book of business." For the reasons set forth above, HHS is finalizing the proposed exemption, with certain modifications discussed below.

Comment: Some commenters stated that adopting the proposed exemption would set a precedent permitting other contributing entities to seek exemptions from reinsurance contributions. Several commenters stated that the proposed exemption inappropriately treats self-insured plans with TPAs differently from self-insured, self-administered plans, and will inequitably shift reinsurance costs from self-insured, self-administered plans to self-insured plans with TPAs and health insurance issuers. Several commenters stated that the proposed exemption inappropriately favors "union plans."

Response: Self-insured, self-administered plans are a unique subset of potential contributing entities. The proposed exemption is narrowly drawn so that only a self-insured plan that does not use a TPA to perform its claims processing, claims adjudication, and enrollment functions would qualify for the exemption. As discussed in the preamble to the proposed rule, section 1341 of the Affordable Care Act supports the distinction between self-insured, self-administered plans and self-insured plans that use a TPA, since sections 1341(b)(1)(A) and (b)(3)(A) of the Affordable Care Act specifically refer to self-insured plans with TPAs and are silent as to self-insured, self-administered plans. In addition, section 1341(b)(3)(B) of the Affordable Care Act and § 153.400(a)(1)(ii) provide that reinsurance contributions are to reflect a "commercial book of business." A self-insured, self-administered plan is fundamentally different from a health insurance issuer as well as a self-insured plan that uses a TPA, in that an insured plan and a self-insured plan with a TPA both involve an external commercial entity (the issuer or the TPA, which may itself be an issuer or an issuer affiliate). There will be no shifting of costs for 2014 because the exemption for self-insured, self-administered plans will only apply to the 2015 and 2016 benefit years. Based on comments received, our understanding is that relatively few plans will be eligible for the exemption. In addition, reinsurance payments will decrease substantially for the 2015 and 2016 benefit years, so all contributing entities will be responsible for substantially lower contributions for those years.

Finally, any self-insured plan that does not use a TPA for the core administrative functions of claims processing, claims adjudication (including the management of internal appeals), or enrollment may claim the exemption for the 2015 and 2016 benefit years, irrespective of whether the plan is jointly sponsored by a union and an employer or any other type of employer.

Comment: Several commenters urged HHS to expand the exemption significantly. For example, a number of commenters stated that all self-insured plans should be exempt from reinsurance contributions, or that self-

insured plans that use non-issuer TPAs should be exempt. Additionally, some of the commenters stated that it was inappropriate to have a different definition of contributing entity for the 2014 benefit year, and that the proposed exemption should apply for all three benefit years. According to these commenters, there is adequate time for contributing entities to make the necessary adjustments, and consequently, the change would not be disruptive in the 2014 benefit year.

Response: For the reasons discussed above and in the preamble to the 2014 Payment Notice (78 FR 15455), all self-insured plans are not exempt from reinsurance contributions. HHS also does not believe it has the authority to differentiate between TPAs that are issuers or issuer affiliates and non-issuer TPAs for purposes of the exemption. This is because sections 1341(b)(1)(A) and (b)(3)(A) of the Affordable Care Act only refers to issuers and TPAs, and does not distinguish between issuer TPAs and non-issuer TPAs. Exempting only non-issuer TPAs would treat similarly situated TPAs that perform comparable services for similar clients differently solely because one TPA is an issuer or issuer affiliate. In addition, we continue to believe that making the proposed exemption effective for the 2014 benefit year at this late stage would be disruptive to plans and issuers that have already set contribution rates and premiums, and could upset settled estimates with respect to expected reinsurance payments and contribution obligations. Therefore, we are retaining the proposal that this exemption only apply for the 2015 and 2016 benefit years.

Comment: Some commenters agreed with the proposed exemption, including the core functions test for determining when a self-insured plan uses a TPA. Some commenters objected to the proposed core functions approach on the grounds that it lacked clarity, was ambiguous, overly complex, or took the wrong factors into account. Some commenters stated that the proposed test was too broad in that it would be too easy for self-insured plans that use outside service providers to be deemed to be using a TPA, with the result that very few plans would be able to claim the proposed exemption. Another commenter indicated that the core functions test was unclear, and that too many plans would be able to claim the exemption. Some commenters suggested other tests to ascertain when a self-insured plan is self-administered or uses a TPA. For example, some commenters suggested a test which looks to whether a self-insured plan is using a third party for a "full complement" of administrative functions or all services in connection with administering the plan. Another commenter suggested that the proper test was whether a plan retains legal responsibility to adjudicate claims and decide appeals. Some commenters urged limiting the exclusion to self-insured plans that do not utilize the services of third parties in any way to facilitate or assist in the proper administration of the plan.

Response: After a thorough review of the comments, we are generally retaining the proposed core functions analysis as a reasonable and objective indicator of which self-insured plans should be properly classified as self-administered for the limited purpose of determining whether such plans are contributing entities for reinsurance contribution purposes. In response to comments, we are clarifying that a self-insured plan must retain responsibility for claims payment, claims adjudication (including internal appeals), and enrollment in order to be regarded as self-administered during the 2015 and 2016 benefit years. Thus, subject to the exceptions described below, if a self-insured plan uses a third party for claims payment, claims adjudication, or enrollment, it would not be treated as self-administered for purposes of reinsurance contributions during the 2015 and 2016 benefit years. As suggested in comments, we are adopting certain modifications to our proposal regarding such issues as leasing of networks and *de minimis* use of third party services.

Comment: In the preamble to the proposed rule, HHS sought comment as to whether any other administrative functions should be considered in determining whether a self-insured plan uses a TPA for core administrative functions, including medical management, provider network development, and other support tasks.

Numerous commenters noted that self-insured plans very rarely develop and manage their own provider networks, and typically "lease" such networks from issuers. In these arrangements, the self-insured plan pays a fee to the issuer (or other entity) for the use of its provider network. The issuer (or other entity) bears the costs of developing and maintaining the networks, and also "reprices" the self-insured plan's claims to take into account provider discounts the issuer has negotiated with members of its network. These commenters suggested that a self-insured plan that leases a network should not lose self-administered status for reinsurance contributions purposes.

Response: HHS agrees with the commenters' suggestion, and is clarifying in regulation text that if a self-insured plan "leases" a network from an unrelated third party and also obtains provider network development, claims repricing, and similar services, the plan will not lose self-administered status as a result.

Comment: In the preamble to the proposed rule, HHS sought comment as to whether a self-insured plan may outsource specific services, such as those relating to pharmaceutical benefits, without losing self-administered status, or whether an unaffiliated service provider may provide a *de minimis* or small percentage of all services for the plan. Commenters requested that a self-insured, self-administered plan be able to obtain prescription drug benefits provided by a pharmacy benefits manager (PBM), as well as services from specialized vendors for behavioral health, vision/dental benefits, or benefits with respect to which Medicare is the primary provider. The commenters noted the prevalence of these arrangements in the market, and that some of the outsourced benefits are exempt from reinsurance contributions. Commenters were divided as to whether a self-insured plan should be permitted to receive a *de minimis* percentage of all benefits and services from an unrelated third party without the plan losing self-administered status.

Response: In response to comments, we are clarifying the following in regulation text. First, a self-insured plan may outsource core administrative functions (claims processing, claims adjudication, and enrollment services) to an unrelated third party such as a PBM without losing self-administered status, provided that the underlying benefits are pharmacy benefits or excepted benefits as defined by section 2791(c) of the PHS Act. We clarify that medical benefits, other than pharmacy benefits or excepted benefits, cannot be outsourced by a self-insured, self-administered plan if the plan wants to retain its exemption from the definition of contributing entity. For example, if a self-insured plan enters into a separate contract for more than a *de minimis* amount of services related to mental health or substance abuse benefits, this contractual arrangement would disqualify the plan from the exemption. We also clarify that a self-insured plan may outsource a *de minimis* amount of core administrative services for benefits other than excepted benefits or pharmacy benefits to an unrelated party.

For this purpose, we clarify that a *de minimis* amount means up to 5 percent, as measured by the amount of enrollment or claims processing transactions for non-pharmacy and non-excepted benefits which are outsourced, or by the value of the outsourced enrollment or claims processing transactions for non-pharmacy and non-excepted benefits (measured by the cost of the outsourced services compared to the sum of those costs plus the fully loaded costs—that is, including an appropriate share of indirect costs, such as fixed and overhead expenses—reasonably allocated, borne by the self-insured plan for such services).

Comment: In certain multiemployer funds, the fund may use an administrator for certain purposes that is an affiliate of certain, but not all, sponsors. Several commenters requested clarification that this structure would not result in the fund losing otherwise applicable self-administered status.

Response: We are clarifying that a service provider that is affiliated with one or more sponsors other than the sponsor that is the contributing entity in the context of a multiemployer fund will not be a TPA, and would therefore not lose its self-administered status for purposes of reinsurance contributions in the 2015 and 2016 benefit years.

Comment: One commenter asked that HHS clarify whether a self-insured plan or its TPA is a contributing entity that must make reinsurance contributions. One commenter stated that any entity providing services to plans subject to reinsurance should be required to submit contributions for their benefits.

Response: As noted in the preamble of the 2014 Payment Notice (78 FR 15455), pursuant to the definition of a contributing entity in § 153.20, "a self-insured group health plan that is a contributing entity is responsible for the reinsurance contributions, although it may use a TPA or administrative services-only contractor for transfer of the reinsurance contributions."

Comment: One commenter stated that exempting self-insured, self-administered plans from making reinsurance contributions would increase the 2015 contribution rate by $3 for all other contributing entities, and exempting these health plans has an unfair impact on those remaining entities subject to reinsurance contributions.

Response: Because we expect few entities to qualify for it, we estimate that the exclusion of self-insured, self-administered plans will have a small effect on the 2015 uniform contribution rate.

c. Uniform Reinsurance Contribution Rate

(i) Uniform Reinsurance Contribution Rate for the 2015 Benefit Year

Section 153.220(c) requires HHS to publish in the annual HHS notice of benefit and payment parameters the uniform reinsurance contribution rate for the upcoming benefit year. Section 1341(b)(3)(B)(iii) of the Affordable Care Act specifies that $10 billion for reinsurance contributions are to be collected from contributing entities in 2014, $6 billion in 2015, and $4 billion in 2016 (reinsurance payment pool). Additionally, sections 1341(b)(3)(B)(iv) and 1341(b)(4)(B) of the Affordable Care Act direct that $2 billion in funds are to be collected for contributions to the U.S. Treasury in 2014, $2 billion in 2015, and $1 billion in 2016. Finally, section 1341(b)(3)(B)(ii) of the Affordable Care Act allows for the collection of additional amounts for administrative expenses. Taken together, these three components make up the total dollar amount to be collected from contributing entities for each of the 3 years of the reinsurance program under the uniform reinsurance contribution rate.

As discussed in the 2014 Payment Notice (78 FR 15459), each year, the uniform reinsurance contribution rate will be calculated by dividing the sum of the three amounts (the reinsurance payment pool, the U.S. Treasury contribution, and administrative costs) by the estimated number of enrollees in plans that must make reinsurance contributions:

$$\textit{Uniform Reinsurance Contribution Rate} = \frac{\textit{Reinsurance payment pool} + \textit{Treasury contribution} + \textit{Administrative costs}}{\textit{Estimate of enrollees in plans required to make reinsurance contributions}}$$

We proposed collecting $25.4 million for administrative expenses for the 2015 benefit year (or 0.4 percent of the $6 billion to be dispersed). Therefore, the total amount to be collected would be approximately $8.025 billion. Our estimate of the number of enrollees in plans that must make reinsurance contributions yields a 2015 annual per capita contribution rate of $44, about $3.67 per month. We are finalizing this contribution rate as proposed.

Comment: One commenter asked that HHS implement a two-tiered contribution rate, charging issuers more since they benefit from the program and self-insured group health plans less. Other commenters suggested that only issuers be required to make contributions allocated for the U.S. Treasury.

Response: The statute does not differentiate between the contribution amounts required from issuers and third party administrators on behalf of self-insured group health plans. As noted in the Premium Stabilization Rule (77 FR 17227), we are using a national, per capita contribution rate because it is a simpler approach that minimizes the administrative burden of collections.

(ii) Timing of Collection of Reinsurance Contributions

We proposed modifying our collection schedule for the reinsurance program, so that we collect the reinsurance contribution amounts for reinsurance payments and for administrative expenses earlier in the calendar year following the applicable benefit year, approximately in accordance with the schedule in § 153.405(c), but collect the reinsurance contribution amounts for payments to the U.S. Treasury in the last quarter of the calendar year following the applicable benefit year.

Under proposed § 153.405(c)(1), following submission of the annual enrollment count, HHS would notify a contributing entity of the reinsurance contribution amount allocated to reinsurance payments and administrative expenses to be paid for the applicable benefit year. If the enrollment count is timely submitted, HHS would notify the contributing entity by December of benefit year 2014, 2015, or 2016, as applicable. We note that, due to our desire to align the notification of reinsurance contributions due with our monthly payment and collections cycle, this schedule differs slightly from the schedule currently set

forth in § 153.405(c), which provides for notification by the later of 30 days of the submission of the annual enrollment count or by December 15. Under proposed § 153.405(c)(3), the contributing entity must remit this amount within 30 days after the date of the first notification.

The second installment covers the portion of the reinsurance contribution amount allocated to the payments for the U.S. Treasury to be paid for a benefit year. Under proposed § 153.405(c)(2), in the fourth quarter of the calendar year following the applicable benefit year, HHS would notify the contributing entity of the portion of the reinsurance contribution amount allocated for payments to the U.S. Treasury for the applicable benefit year. In accordance with proposed § 153.405(c)(3), a contributing entity would remit this amount within 30 days after the date of this second notification. We note that the contributing entity is required to submit an annual enrollment count only once for each benefit year under § 153.405(b), by not later than November 15th of the benefit year.

For the 2014 benefit year, of the $63 annual per capita contribution rate, $52.50 would be allocated towards reinsurance payments and administrative expenses, and $10.50 towards payments to the U.S. Treasury. Therefore, if a contributing entity submits its enrollment count by November 15, 2014, a reinsurance contribution payment of $52.50 per covered life would be invoiced in December 2014, and payable in January, 2015. Another reinsurance contribution payment of $10.50 per covered life would be invoiced in the fourth quarter of 2015, and payable late in the fourth quarter of 2015. For the 2015 benefit year, the $44 annual per capita contribution rate would be allocated $33 towards reinsurance payments and administrative expenses, and $11 towards payments to the U.S. Treasury. These amounts would similarly be payable in January 2016 and late in the fourth quarter of 2016, respectively.

In order to leave the MLR and risk corridors calculations unchanged, we clarified in the proposed rule that the two installment payments would be included with 2014, 2015, and 2016 data, for purposes of the risk corridors and MLR reports due July 31, 2015, 2016, and 2017, respectively, despite the fact that the later installment would not have been paid at that time.

We are finalizing the bifurcated contribution collection schedule as discussed above.

Comment: Several commenters supported our proposal to collect reinsurance contributions via two collections. Many commenters supporting our proposal asked that contributing entities have the option to pay the entire contribution in one payment while other commenters asked that we return to one annual collection schedule, citing the increased administrative burden of making two collections. One commenter supporting the bifurcated collection schedule specifically supported our proposal that the full 2014 reinsurance contribution be included with 2014 MLR reporting, despite the fact that the second payment would not have occurred by the MLR reporting deadline.

Response: We recognize that the reinsurance collections provided for in the Affordable Care Act will result in substantial upfront payments from contributing entities for the reinsurance program. Therefore, in consideration of the comments received, we are finalizing our proposal to collect contributions via two payments. We will not permit contributing entities to choose between collection schedules for operational reasons.

Comment: One commenter expressed concern that the bifurcation of the collection of the 2014 contribution rate of $63 per enrollee would not evenly divide into a per enrollee per month charge when split into payments of $52.50 and $10.50. The commenter suggested that we revise the 2014 contribution rate to require $52.44 in the first payment ($4.37 per enrollee per month) and $10.56 in the second payment ($0.88 per enrollee per month).

Response: We do not believe it is necessary that the contribution amounts divide evenly into a per enrollee per month charge and further note that certain of the permitted counting methods set forth in 45 CFR 153.405 will yield fractional enrollment counts, whether tallied at the annual or monthly level.

Comment: One commenter sought clarification on when HHS would invoice contributing entities if enrollment counts are submitted by November 15th of the applicable benefit year pursuant to § 153.405(b). The commenter asked that HHS invoice contributing entities by December 1st.

Response: As noted in the proposed rule, if a contributing entity submits its enrollment count for the 2014 benefit year by November 15, 2014, a reinsurance contribution payment of $52.50 per covered life would be invoiced in December 2014, and payable in January, 2015. We anticipate that these invoices will align with our monthly payment and collections schedule. We will provide more specific timelines in future guidance.

Comment: One commenter asked that HHS defer the collection of contributions allocated to the U.S. Treasury until 2016.

Response: Sections 1341(b)(3)(B)(iv) and 1341(b)(4)(B) of the Affordable Care Act specify $2 billion in funds are to be collected for contributions to the U.S. Treasury in 2014, $2 billion in 2015, and $1 billion in 2016. As noted in the 2014 Payment Notice (78 FR 15460), we do not believe HHS has authority under the statute to defer this collection.

(iii) Allocation of Uniform Reinsurance Contribution Rate

Section 153.220(c) provides that HHS is to set in the annual HHS notice of benefit and payment parameters for the applicable benefit year the proportion of contributions collected under the uniform reinsurance contribution rate to be allocated to reinsurance payments, payments to the U.S. Treasury, and administrative expenses. In the 2014 Payment Notice (78 FR 15460), we stated that reinsurance contributions collected for 2014 will be allocated pro rata to the reinsurance pool, administrative expenses, and the U.S. Treasury, up to $12.02 billion. Similar to the pro rata approach set forth in the 2014 Payment Notice, in Table 2, we specify the proportions for 2015 (or amounts, as applicable):

TABLE 2—PROPORTION OF REINSURANCE CONTRIBUTIONS COLLECTED UNDER THE UNIFORM REINSURANCE CONTRIBUTION RATE FOR THE 2015 BENEFIT YEAR FOR REINSURANCE PAYMENTS, PAYMENTS TO THE U.S. TREASURY, AND ADMINISTRATIVE EXPENSES

	If total contribution collections under the uniform reinsurance contribution rate are less than or equal to $8.025 billion	If total contribution collections under the uniform reinsurance contribution rate are more than $8.025 billion
Proportion or amount for:		
Reinsurance payments	74.8 percent ($6 billion/$8.025 billion).	The difference between total collections and those contributions allocated to the U.S. Treasury and administrative expenses.
Payments to the U.S. Treasury	24.9 percent ($2 billion/$8.025 billion).	$2 billion.
Administrative expenses	0.3 percent ($25.4 million/$8.025 billion).	$25.4 million.

As shown in Table 2, if the total amount of contributions collected is less than or equal to $8.025 billion, we will allocate approximately 74.8 percent of the reinsurance contributions collected to reinsurance payments, 24.9 percent of the reinsurance contributions collected to the U.S. Treasury, and 0.3 percent of the reinsurance contributions collected to administrative expenses.

To provide that all reinsurance contributions collected for a benefit year are paid out for claims for that benefit year, we proposed to amend § 153.230(d) to provide that if HHS determines that the amount of all reinsurance payments requested under the uniform payment parameters from all reinsurance-eligible plans in all States for a benefit year will not be equal to the amount of all reinsurance contributions collected for reinsurance payments under the uniform contribution rate in all States for an applicable benefit year, HHS will determine a uniform pro rata adjustment (up or down) to be applied to all such requests for reinsurance payments for all States. We proposed that each applicable reinsurance entity, or HHS on behalf of a State, reduce or increase the reinsurance payment amounts for the applicable benefit year by any adjustment required under that paragraph.

We sought comment on the proposal to use excess funds in a current benefit year, including whether any excess collections should be allocated to increasing coinsurance rates above 100 percent, or whether such funds should be used instead to change other reinsurance parameters, or used for future benefit years.

Because our proposed changes noted above would provide that all reinsurance contributions collected for a benefit year are paid out for claims for that benefit year, we proposed to delete and reserve § 153.235(b), which currently provides that any excess reinsurance contributions collected from contributing entities for any benefit year but unused for the applicable benefit year *must* be used for reinsurance payments in subsequent benefit years. We are finalizing our proposal to use excess contributions for reinsurance payments for the current benefit year by increasing the coinsurance rate up to 100 percent before rolling over any remaining funds to the next year. Therefore, we are not finalizing our proposal to delete and reserve § 153.235(b). We are finalizing our modification to § 153.230(d) to provide that if HHS determines that the amount of reinsurance payments requested under the uniform payment parameters will not be equal the amount of reinsurance contributions collected for reinsurance payments, HHS will determine a uniform adjustment (up or down) to be applied to all requests for reinsurance payments.

Comment: Some commenters supported our proposal to use excess funds in the current benefit year. Others asked that we roll over excess funds to potentially lower the contribution rate in future benefit years, or that excess funds be refunded to contributing entities. Some commenters who supported the use of excess funds in the current benefit year suggested that we only increase the coinsurance rate up to 100 percent and then roll over any additional funds to a subsequent benefit year, in order to avoid perverse incentives to incur claims costs. One commenter supported increasing the coinsurance rate above 100 percent.

Response: We are finalizing our proposal to use excess reinsurance contributions for reinsurance payments in the current benefit year by increasing the coinsurance rate up to 100 percent before rolling over any remaining funds to the next year. We believe that a 100 percent ceiling on the coinsurance rate is appropriate, and will permit us to increase reinsurance payments in subsequent years if we collect more in contributions than are requested in payments.

(iv) Administrative Expenses

In the 2014 Payment Notice (78 FR 15460), we estimated that the Federal administrative expenses of operating the reinsurance program would be $20.3 million, based on our estimated contract and operational costs. We proposed to use the same methodology to estimate the administrative expenses for the 2015 benefit year. These estimated costs would cover the costs related to contracts for developing the uniform reinsurance payment parameters and the uniform reinsurance contribution rate, collecting reinsurance contributions, making reinsurance payments, and conducting account management, data collection, program integrity and audit functions, operational and fraud analytics, training for entities involved in the reinsurance program, and general operational support. We proposed to exclude from these administrative expenses the costs associated with work performed by Federal personnel. To calculate our proposed reinsurance administrative expenses for the 2015 benefit year, we

divided HHS's projected total costs for administering the reinsurance programs on behalf of States by the expected number of covered lives for which reinsurance contributions are to be made for the 2015 benefit year.

We estimated this amount to be approximately $25.4 million for the 2015 benefit year. The 2015 estimate has increased from the 2014 estimate because we will be making reinsurance payments in 2015 for the 2014 benefit year, and as discussed below, will engage in program integrity and audit-related activity in 2015 to oversee the reinsurance program. We believe that this figure reflects the Federal government's significant economies of scale, which helps to decrease the costs associated with operating the reinsurance program. Based on our estimate of covered lives for which reinsurance contributions are to be made for the 2015 benefit year, we proposed a uniform reinsurance contribution rate of $0.14 annually per capita for HHS administrative expenses. We provide details below on the methodology we used to develop the 2015 enrollment estimates.

For the 2014 benefit year, we allocated the administrative expenses equally between contribution and payment-related activities. Because we anticipate that our additional activities in the 2015 benefit year, including our program integrity and audit activities, will also be divided approximately equally between contribution and payment-related activities, we again proposed to allocate the total administrative expenses equally between these two functions. Therefore, as shown in Table 3, we will apportion the annual per capita amount of $0.14 of administrative expenses as follows: (a) $0.07 of the total amount collected per capita for administrative expenses for the collection of contributions from health insurance issuers and group health plans; and (b) $0.07 of the total amount collected per capita for administrative expenses for reinsurance payment activities, supporting the administration of payments to issuers of reinsurance-eligible plans.

TABLE 3—BREAKDOWN OF ADMINISTRATIVE EXPENSES

[Annual, per capita]

Activities	Estimated expenses
Collecting reinsurance contributions from health insurance issuers and group health plans	$0.07
Calculation and disbursement of reinsurance payments	0.07
Total annual per capita expenses for HHS to perform all reinsurance functions	0.14

If HHS operates the reinsurance program on behalf of a State, HHS will retain the annual per capita fee to fund HHS's performance of all reinsurance functions, which would be $0.14. If a State establishes its own reinsurance program, HHS will transfer $0.07 of the per capita administrative fee to the State for purposes of administrative expenses incurred in making reinsurance payments, and retain the remaining $0.07 to offset the costs of collecting contributions. We note that the administrative expenses for reinsurance payments will be distributed to those States that operate their own reinsurance program in proportion to the State-by-State total requests for reinsurance payments made under the uniform reinsurance payment parameters. We received no comments on our proposed 2015 administrative expenses and are finalizing this provision as proposed.

d. Uniform Reinsurance Payment Parameters for 2015

Section 1341(b)(2)(B) of the Affordable Care Act directs the Secretary, in establishing standards for the transitional reinsurance program, to include a formula for determining the amount of reinsurance payments to be made to issuers for high-risk individuals that provides for the equitable allocation of funds. In the Premium Stabilization Rule (77 FR 17228), we provided that reinsurance payments to eligible issuers will be made for a portion of an enrollee's claims costs paid by the issuer (the coinsurance rate) that exceeds an attachment point (when reinsurance would begin), subject to a reinsurance cap (when the reinsurance program stops paying claims for a high-cost individual). The coinsurance rate, attachment point, and reinsurance cap together constitute the uniform reinsurance payment parameters.

Given the smaller pool of reinsurance contributions to be collected for the 2015 benefit year, as directed by the statute, we proposed that the 2015 uniform reinsurance payment parameters be established at an attachment point of $70,000, a reinsurance cap of $250,000, and a coinsurance rate of 50 percent. We estimate that these uniform reinsurance payment parameters will result in total requests for reinsurance payments of approximately $6 billion for the 2015 benefit year.

As discussed in the 2014 Payment Notice (78 FR 15461), to assist with the development of the uniform reinsurance payment parameters and the premium adjustment percentage index, HHS developed the Affordable Care Act Health Insurance Model (ACAHIM). The ACAHIM estimates market enrollment, incorporating the effects of State and Federal policy choices, and accounting for the behavior of individuals and employers. The outputs of the ACAHIM, especially the estimated enrollment and expenditure distributions, were used to analyze a number of policy choices relating to the proposed 2015 reinsurance contribution rate and 2015 uniform reinsurance payment parameters.

The ACAHIM generates a range of national and State-level outputs for 2015, including the level and composition of enrollment across markets given the eligible population in each State. The ACAHIM is described below in two sections: (1) The approach for estimating 2015 enrollment; and (2) the approach for estimating 2015 expenditures. The ACAHIM uses recent Current Population Survey (CPS) data adjusted for small populations at the State level, exclusion of undocumented immigrants, and population growth in 2015 to assign individuals to the various coverage markets.

Specifically, the ACAHIM assigns each individual to a single health insurance market as his or her baseline (pre-Affordable Care Act) insurance status. In addition to assuming that individuals currently enrolled in Medicare, TRICARE, or Medicaid will remain in such coverage, the ACAHIM takes into account the probability that a firm will offer employment-based coverage based on the CPS distribution of coverage offers for firms of a similar size and industry. Generally, to determine the predicted insurance enrollment status for an individual or family (the "health insurance unit" or

"HIU"), the ACAHIM calculates the probability that the firm will offer insurance, then models Medicaid eligibility, and finally models eligibility for advance payments of the premium tax credit and cost-sharing reductions under the Exchange. Whenever a transition to another coverage market is possible, the ACAHIM takes into account the costs and benefits of the decision for the HIU and assigns a higher probability of transition to those with the greatest benefit. The ACAHIM assumptions of the rate at which uninsured individuals will take-up individual market coverage are based on current take-up rates of insurance across States, varied by demographics and incomes and adjusted for post-Affordable Care Act provisions, such as advance payments of the premium tax credit and cost-sharing reductions.

Estimated expenditure distributions from the ACAHIM are used to set the uniform reinsurance payment parameters so that estimated contributions from all contributing entities equal estimated payments for all reinsurance-eligible plans. The ACAHIM uses the Health Intelligence Company, LLC (HIC) database from calendar year 2010, with the claims data trended to 2015 to estimate total medical expenditures per enrollee by age, gender, and area of residence. The expenditure distributions are further adjusted to take into account plan benefit design, or "metal" level (that is, "level of coverage," as defined in § 156.20) and other characteristics of individual insurance coverage in an Exchange. To describe a State's coverage market, the ACAHIM computes the pattern of enrollment using the model's predicted number and composition of participants in a coverage market. These estimated expenditure distributions were the basis for the uniform reinsurance payment parameters. We are finalizing the 2015 reinsurance payment parameters as proposed.

Comment: Some commenters suggested that HHS keep the reinsurance payment parameters consistent between 2014 and 2015, and delay increasing the attachment point to $70,000 and decreasing the coinsurance rate to 50 percent until 2016, or keep the 2014 and 2015 attachment points as close as possible. One commenter asked HHS to increase the contribution rate to account for increased costs during 2014 and 2015. Other commenters supported lowering the 2015 contribution rate and uniform reinsurance payment parameters.

Response: Section 1341(b)(3)(B)(iii) of the Affordable Care Act directs HHS to collect $6 billion for reinsurance payments in 2015. This is $4 billion less than will be collected in 2014 for reinsurance payments. We believe that the lower coinsurance rate and higher attachment point we have proposed appropriately accounts for this smaller reinsurance payment pool. We also believe that maintaining the reinsurance cap for the 2015 benefit year will make it easier for issuers to estimate the effects of reinsurance, and reduce interference with the traditional commercial reinsurance market. As discussed above, to the extent that reinsurance contributions for 2015 exceed reinsurance payments requested, our policy of increasing the coinsurance rate up to 100 percent will help assure that the excess contributions are used to offset claims for high-cost individual market enrollees.

e. Adjustment Options

In the 2014 Payment Notice, we finalized the following uniform reinsurance payment parameters for the 2014 benefit year—a $60,000 attachment point, a $250,000 reinsurance cap, and an 80 percent coinsurance rate. However, updated information, including the actual premiums for reinsurance-eligible plans, as well as recent policy changes, suggest that our prior estimates of the uniform reinsurance payment parameters overestimated the total covered claims costs of individuals enrolled in reinsurance-eligible plans in 2014. To account for this, we proposed to decrease the 2014 attachment point to $45,000. We are finalizing our proposal to decrease the 2014 attachment point to $45,000.

Comment: Several commenters asked that HHS consider alternative relief for the transitional policy announced on November 14, 2013 [27] that does not increase the burden on large employers and self-insured group health plans.

Response: The lowering of the 2014 attachment point will not result in additional contributions being collected from contributing entities. As noted in the proposed rule, we believe that our prior estimates of the 2014 uniform payment parameters overestimated the total covered claims costs of individuals enrolled in reinsurance-eligible plans in 2014, allowing these additional payments to be made from within the amount already being collected.

Comment: Several commenters supported lowering the 2014 attachment point to $45,000. One commenter suggested lowering the attachment point to $20,000. Other commenters opposed lowering the attachment point, asking that HHS return to the finalized 2014 payment parameters, and urging that any excess funds should be rolled over to the subsequent benefit year and used to lower the contribution rate for all contributing entities. Some commenters who objected to the lowering of the attachment point stated that HHS should instead increase the reinsurance cap to $500,000 to reimburse issuers for larger claims costs.

Response: As discussed above, the ACAHIM, which estimates market enrollment, incorporates the effects of State and Federal policy choices and accounts for the behavior of individuals and employers. These assumptions and projections, as well as the transitional policy announced in November 2013, resulted in an updated estimate of the 2014 individual and employer-sponsored insurance markets and expenditures, and permitted us to update our estimate of the 2014 uniform reinsurance payment parameters. We believe that lowering the attachment point to $45,000 would allow the reinsurance program to make more payments for high-cost enrollees without increasing the contribution rate. We are not increasing the reinsurance cap to avoid interfering with traditional commercial reinsurance, which typically has attachment points in the $250,000 range.

Comment: One commenter asked that the proposed modifications to the reinsurance program for the transitional policy be applied consistently in all States.

Response: These modifications will be applied consistently in all States.

f. Reinsurance-Eligible Plans

In this final rule, we clarify that in accordance with the policy established in the 2014 Payment Notice, student health plans are not eligible to receive reinsurance payments. Under § 147.145(b)(3), student health plans are not subject to the single risk pool requirement of section 1312(c) of the Affordable Care Act and § 156.80. Under § 153.234, a reinsurance-eligible plan's covered claims costs for an enrollee incurred prior to the application of the following provisions do not count towards either the uniform reinsurance payment parameters or the State supplemental reinsurance payment parameters: § 147.102 (fair premiums); § 147.104 (guaranteed availability); § 147.106 (guaranteed renewability); § 156.80 (single risk pool); and subpart B of part 156 (essential health benefits). However, we note that a student health

[27] Letter to Insurance Commissioners, Center for Consumer Information and Insurance Oversight, November 14, 2013. Available at: *http://www.cms.gov/CCIIO/Resources/Letters/Downloads/commissioner-letter-11-14-2013.PDF.*

plan would be considered part of a contributing entity's "commercial book of business" and, to the extent that the plan provides major medical coverage, as defined in § 153.20, a contributing entity must make reinsurance contributions on behalf of their enrollees, absent another exception in § 153.400.

In response to this proposed rule, we received several comments asking that certain plans or coverage be eligible for reinsurance payments.

Comment: Several commenters requested that we permit State high-risk pools to be eligible for reinsurance payments for their high-risk enrollees. One commenter asked that the Federal government extend the Federal high-risk pool until all funds are depleted.

Response: As stated in the 2014 Payment Notice (78 FR 15455), under the definition of a reinsurance-eligible plan at § 153.20, State high-risk pools are not eligible to receive reinsurance payments for their enrollees because high risk pool coverage is not subject to the 2014 market reforms outlined under § 153.234 (that is, § 147.102 (fair premiums); § 147.104 (guaranteed availability); § 147.106 (guaranteed renewability); § 156.80 (single risk pool); and subpart B of part 156 (essential health benefits). Therefore, claims costs incurred by high risk pools would not be eligible for reinsurance payments. Funding for the Federal high risk pool, also known as the Pre-Existing Condition Insurance Plan program, is not addressed in this rule.

Comment: One commenter asked that HHS expand the reinsurance program to encompass transitional plans covered by the transitional policy outlined in the November 14, 2013 guidance,[28] while another commenter asked that HHS clarify that only plans that are subject to all of the 2014 market reforms established under the Affordable Care Act are eligible for reinsurance payments.

Response: As discussed above, under § 153.234, a reinsurance-eligible plan's covered claims costs for an enrollee incurred prior to the application of §§ 147.102, 147.104 (subject to 147.145), 147.106 (subject to 147.145), 156.80, and subpart B of part 156 do not count towards either the uniform reinsurance payment parameters or the State supplemental reinsurance payment parameters. Therefore, a transitional plan is not eligible for reinsurance payments. For the purpose of reinsurance contributions, we note that contributing entities are required to make reinsurance contributions for their major medical coverage that is considered to be part of a "commercial book of business," subject to certain exceptions provided for in our regulations. As such, a contributing entity must make reinsurance contributions on behalf of its enrollees in transitional plans that provide major medical coverage, as defined in § 153.20, unless one of the exceptions provided under 45 CFR 153.400 applies to such coverage.

g. Deducting Cost-Sharing Reduction Amounts From Reinsurance Payments

Subpart H of 45 CFR part 153 governs the submission of medical and pharmacy claims to an issuer's dedicated distributed data environment. Under § 156.410, if an individual is determined eligible to enroll in an individual market Exchange QHP and elects to do so, the QHP issuer must assign the individual to a standard plan or cost-sharing plan variation based on the enrollment and eligibility information submitted by the Exchange. Issuers of individual market Exchange QHPs will receive cost-sharing reduction payments for enrollees that have effectuated coverage in cost-sharing plan variations. Therefore, in the 2014 Payment Notice (78 FR 15499), we stated that the enrollee-level data submitted by an issuer of a reinsurance-eligible plan must include claims data and data related to determining cost-sharing reductions provided through a cost-sharing plan variation to permit HHS to calculate an issuer's plan paid amounts on behalf of an enrollee. In the proposed rule, we explained the methodology HHS proposed to use to deduct the amount of cost-sharing reductions paid on behalf of an enrollee enrolled in a QHP in an individual market through an Exchange.

As specified in § 153.230, HHS will calculate reinsurance payments by applying the uniform reinsurance payment parameters for the applicable benefit year to the issuer's plan paid amounts on behalf of each enrollee in a reinsurance-eligible plan for the benefit year. However, this calculation may not always account for the cost-sharing reduction payments the QHP issuer receives for an enrollee, resulting in an issuer receiving payments twice for the same enrollee's total costs. In the proposed rule, we stated that we believe that the cost-sharing payment amounts provided by HHS to a QHP issuer for an enrollee in a plan variation should be deducted from the total plan paid amounts to avoid "double payment" to the QHP issuer of the reinsurance-eligible plan because the QHP issuer is already being reimbursed for the value of the cost-sharing reductions provided.

Under the Secretary's authority under section 1341(b)(2)(B) of the Affordable Care Act to establish a payment formula for the reinsurance program that provides for the equitable allocation of available funds, we proposed a method through which HHS intends to account for cost-sharing reduction payments when calculating reinsurance payments for QHP issuers for reinsurance-eligible plans offered in an individual market. We proposed that for each enrollee enrolled in a QHP plan variation, we would subtract from the QHP issuer's total plan paid amounts for the enrollee in a reinsurance-eligible plan the difference between the annual limitation on cost sharing for the standard plan and the annual limitation on cost sharing for the plan variation. Because reinsurance payments are made for enrollees only when the issuer's total plan paid amounts exceed the attachment point (for example, $45,000 in the 2014 benefit year), we believe that it is highly unlikely that an enrollee for which a QHP issuer is eligible for reinsurance payments will not have reached the annual limitation on cost sharing. Therefore, the difference between the two annual limitations on cost sharing is likely to be an accurate estimate of cost-sharing reduction payments provided by HHS to the QHP issuer. We proposed to apply this approach to calculating the amounts of cost-sharing reductions provided for an enrollee in a silver plan variation or a zero cost sharing plan variation.

For policies with multiple enrollees, such as family policies, we proposed to allocate the difference in annual limitation in cost sharing across all enrollees covered by the family policy in proportion to the enrollees' QHP issuer total plan paid amounts.

In contrast, we proposed not to reduce the QHP issuer's plan paid amounts for purposes of calculating reinsurance payments for an Indian in a limited cost sharing plan variation. We are finalizing these provisions as proposed.

Comment: Several commenters supported our proposed approach to account for cost-sharing reduction payments. One commenter asked, in the case of a policy with multiple enrollees, that the allocation be made in proportion to each family member's share of costs subject to cost sharing rather than to total costs.

Response: We appreciate the reasoning behind the comment, but believe that it will be operationally simpler to consider total plan paid

[28] Letter to Insurance Commissioners, Center for Consumer Information and Insurance Oversight, November 14, 2013. Available at: *http://www.cms.gov/CCIIO/Resources/Letters/Downloads/commissioner-letter-11-14-2013.PDF.*

amounts when accounting for cost-sharing reductions.

Comment: Several commenters recommended that HHS re-evaluate the methodology for family policies where each individual has a separate annual limitation on cost sharing, suggesting that HHS treat individuals with separate annual limitations on cost sharing as if they had each enrolled in an individual policy for the purposes of accounting for cost-sharing reduction payments in calculating reinsurance payments.

Response: For operational reasons, we believe it will be easier to allocate a family annual limitation on cost sharing across enrollees rather than make individual calculations.

Comment: One commenter sought clarification on how HHS's proposal to calculate the amount of cost-sharing reductions provided for an enrollee in a silver plan variation or a zero cost sharing plan variation would apply if an individual moves between plan variations during the benefit year.

Response: Because cost sharing accumulates over the benefit year across plan variations of the same standard plan, we will apply the adjustment for cost-sharing reductions based on the annual limitation on cost sharing applicable to the plan variation in which the enrollee was last enrolled during the benefit year.

Comment: One commenter asked for clarification regarding the following footnote set forth in the proposed rule (78 FR 72345, n. 16): "We note that because the annual limitation on cost sharing applies only to in-network services, it is possible that an enrollee could incur additional cost-sharing reductions on out-of-network services. However, except in the case of zero cost sharing plan variations, an issuer is not required to reduce cost sharing out-of-network, and we believe that an issuer will rarely choose to do so because the AV Calculator does not recognize any change in AV due to a reduction in out-of-network cost sharing. Although it is possible that an enrollee in a zero cost sharing plan variation could incur significant out-of-network cost-sharing reductions beyond the standard plan's annual limitation on cost sharing, we believe such a circumstance will be relatively rare because of the substantial out-of-pocket costs an enrollee would likely incur in the form of balance billing."

Response: We proposed the methodology described above to avoid reimbursing an issuer through reinsurance payments for claims costs for which it will be otherwise reimbursed through cost-sharing reduction payments. The footnote explains that this methodology does not take into account cost-sharing reductions on out-of-network services because we believe that issuers have little incentive to provide cost-sharing reductions on out-of-network services for silver plan variations, and that it will be relatively rare that an enrollee in a zero cost sharing plan will incur substantial out-of-pocket costs beyond the standard plan's annual limitation on cost sharing. Thus, we stated that we believed that the effect of this limitation in our methodology would be small.

h. Audits

(i) HHS Audits of State-Operated Reinsurance Programs

We proposed in § 153.270(a) authority for HHS or its designee to conduct a financial and programmatic audit of a State-operated reinsurance program to assess compliance with the requirements of subparts B and C of 45 CFR part 153. We proposed that a State that establishes a reinsurance program be required to ensure that its applicable reinsurance entity and any relevant contractors, subcontractors, or agents cooperate with an audit of its reinsurance program by HHS or its designee. We stated that HHS anticipates conducting targeted audits of State-operated reinsurance programs based on the State summary report provided to HHS for each benefit year described in § 153.260(b), the results of the independent external audit conducted for each benefit year under § 153.260(c), and issuer input, among other factors.

We proposed in § 153.270(b) that if an audit by HHS results in a finding of material weakness or significant deficiency (as these terms are defined in GAAS issued by the American Institute of Certified Public Accountants, and Government Auditing Standards issued by the Government Accountability Office (GAO) [29]) with respect to the State-operated reinsurance program's compliance with any requirement of subparts B or C of 45 CFR part 153, the State would be required to ensure that its applicable reinsurance entity provide a written corrective action plan to HHS for approval within 60 calendar days of the issuance of the final audit report. The State would ensure that the applicable reinsurance entity implements the plan and provides to HHS written documentation of the corrective actions once taken.

(ii) HHS Audits of Contributing Entities

We proposed in § 153.405(i) that HHS or its designee have the authority to audit a contributing entity to assess its compliance with the requirements of subpart E of 45 CFR part 153. We stated that we anticipated conducting targeted audits of contributing entities based on, among other criteria and sources, data provided to HHS through the annual enrollment count submitted under § 153.405(b), and any previous history of noncompliance with these standards. We proposed that if HHS determines as the result of an audit that a contributing entity was required to pay additional reinsurance contributions, we might require the contributing entity to pay such amounts to the Federal government.

(iii) HHS Audits of Issuers of Reinsurance-Eligible Plans

We proposed in § 153.410(d) authority for HHS or its designee to audit an issuer of a reinsurance-eligible plan to assess its compliance with the requirements of subparts E and H of 45 CFR part 153. We also proposed that if an audit results in a finding of material weakness or significant deficiency (as these terms are defined in GAAS issued by the American Institute of Certified Public Accountants, and Government Auditing Standards issued by the Government Accountability Office (GAO) [30]) with respect to compliance with any requirement of subpart E or H of 45 CFR part 153, the issuer be required to: (i) Within 30 calendar days of the issuance of the final audit report, provide a written corrective action plan to HHS for approval; (ii) implement that corrective action plan; and (iii) provide to HHS written documentation of the corrective actions once taken. We proposed that if HHS determines as the result of an audit that the issuer of a reinsurance-eligible plan has received reinsurance payments to which it was not entitled, we might require the issuer to pay such amounts back to the Federal government.

In the proposed rule, we noted that we anticipate conducting targeted audits of issuers of reinsurance-eligible plans based on, among other criteria and

[29] *See* Government Auditing Standards (2011 Revision), available at: *http://www.gao.gov/yellowbook*. For public companies, the Public Company Accounting Oversight Board (PCAOB) sets audit standards. *See http://pcaobus.org/Standards/Auditing/Pages/default.aspx*. For non-public companies, the AICPA sets audit standards. *See http://www.aicpa.org/Research/Standards/AuditAttest/Pages/SAS.aspx*.

[30] *See* Government Auditing Standards (2011 Revision), available at: *http://www.gao.gov/yellowbook*. For public companies, the Public Company Accounting Oversight Board (PCAOB) sets audit standards. *See http://pcaobus.org/Standards/Auditing/Pages/default.aspx*. For non-public companies, the AICPA sets audit standards. *See http://www.aicpa.org/Research/Standards/AuditAttest/Pages/SAS.aspx*.

sources, the data provided to HHS through the dedicated distributed data environment and any previous history of noncompliance with these standards. We stated that we anticipate that this audit will focus on claims records validating the requests for reinsurance payments submitted to the dedicated distributed data environments, as well as records indicating the plan was a reinsurance-eligible plan.

We addressed the general comments received on the proposed audit provisions in the preamble discussion of § 153.620(c) above, and address comments specific to the transitional reinsurance program audit provisions below. We are finalizing these provisions as proposed.

Comment: One commenter asked that audits of contributing entities be delayed until after the first year of the reinsurance program to enable issuers and self-insured group health plans to focus on compliance. Other commenters stressed the importance of prioritizing audits of contributing entities.

Response: We believe that audits of contributing entities may be necessary to ensure that the reinsurance program has sufficient funds to effectively stabilize premiums during the initial years of Exchange operation, particularly with respect to the 2014 benefit year, for which the largest amount of contributions will be collected. We are therefore not adopting the commenter's suggestion.

Comment: One commenter suggested audit processes that would reduce the burden on contributing entities. Specifically, the commenter asked that audit protocols include sufficient, advance written notice of the audit, and that requests for supporting documentation be limited to enrollment data maintained by or on behalf of the contributing entity and information related to whether the plan provides major medical coverage. The commenter also asked that contributing entities be able to satisfy requests for information in a reasonable manner and format, and that an audited contributing entity be granted appeal rights.

Response: We agree that any audit of a contributing entity should focus on records relating to enrollment in the applicable self-insured or insured plan, to confirm that the number of covered lives was correctly calculated and that the correct amount of reinsurance contributions was paid. Additionally, these audits may be used to identify entities that were required to but did not make reinsurance contributions. We will consider these comments when developing the protocols and procedures of our audits, such as timeframes for notification, formats for submitting supporting documentation, and appeals of audit findings, as part of future rulemaking and guidance.

i. Same Covered Life

In the second final Program Integrity Rule (78 FR 65057), we stated that it is our intent not to require payment of reinsurance contributions more than once for the same covered life. We stated that we recognize that certain complex group health plan arrangements can lead to situations in which lives are covered by multiple arrangements, where it is unclear whether more than one health plan or issuer must make reinsurance contributions, and that we intended to provide clarity on the matter in future rulemaking. In the proposed rule, in § 153.400(a)(1), we clarified the general principle that reinsurance contributions are required for major medical coverage that is considered to be part of a commercial book of business, but are not required to be paid more than once with respect to the same covered life.

In addition, we proposed to add paragraph (vi) to § 153.400(a)(1), which provided that no reinsurance contributions would be required in the case of employer-provided group health coverage where (A) such coverage applies to individuals who are also enrolled in individual market health insurance coverage for which reinsurance contributions are required; or (B) such coverage is supplemental or secondary to group health coverage for which reinsurance contributions must be made for the same covered lives. This provision was proposed to address situations in which a person covered under a group health plan also obtains individual market coverage, and in which multiple group health plans cover the same lives. It also addressed a situation in which two spouses are each covered as dependents by the respective group health plans offered by their two independent employers. We are finalizing these provisions as proposed.

Comment: Several commenters supported our proposal that a contribution not be required with respect to the same life more than once, and our proposal at § 153.400(a)(1)(vi). Other commenters objected to our proposals, stating that information regarding whether coverage is supplementary or secondary is not available to the employer or issuers, and that therefore this proposal would be expensive to administer. One commenter asked if guidance would be forthcoming on how issuers are to validate this exclusion if the coverage occurs among different issuers.

Response: As noted in the proposed rule, if it is not clear from the terms of the health plans which group health plan is supplemental, in keeping with § 153.400(a)(3), the group health plan that offers the greater portion of inpatient hospitalization benefits is deemed the primary health plan. If it is not clear from the terms of the health plans which group health plan is primary and which is secondary, we would defer to the arrangements on primary and secondary liability set forth by the respective plan sponsors, in accordance with applicable State coordination of benefit laws and regulations. In such a situation, we would hold a plan sponsor harmless from non-compliance actions for failure to pay reinsurance contributions to the extent the sponsor relied in good faith upon a written representation by the other sponsor that the other sponsor's coverage has primary liability for claims for particular covered lives (and is responsible for making reinsurance contributions with respect to those covered lives).

Comment: One commenter suggested an operational process of reporting under which plans that provide supplemental and secondary coverage to a participant must identify these participants to the primary major medical coverage and pay a portion of the reinsurance contribution for such participant.

Response: Under our proposal, if employer-provided group health coverage is secondary or supplemental coverage, the group health plan offering such supplemental or secondary coverage is not required to make partial or full contributions on behalf of participants who are also enrolled in a primary major medical plan. We do not wish to require an additional information disclosure in connection with this exemption.

Comment: One commenter suggested that we codify an exception permitting a contributing entity to automatically exclude coverage for any enrollee for which the coverage is secondary under coordination of benefit rules.

Response: Our rule would not extend this exception to coverage which is determined to be secondary under coordination of benefit rules if the entity that provides the primary coverage is not required to make reinsurance contributions. The intent of the rule and accompanying exceptions is to avoid double-counting of contributions, but the commenter's automatic exclusion (if adopted) could incorrectly result in no

reinsurance contributions being made with respect to a covered life.

Comment: One commenter asked that HHS clarify that with respect to supplemental or secondary coverage, any time a participant's spouse is covered as an employee by another group health plan, the participant's plan may exclude that spouse from the count of covered lives and could assume without written representation that the entity that covers the spouse as an employee would be responsible for paying the contribution without further verification.

Response: We decline to make that clarification because our rule would not extend the exception if the entity that provides the primary coverage is not required to make reinsurance contributions. The adoption of the commenter's automatic assumption could incorrectly result in no reinsurance contributions being made with respect to a covered life. As such, the entity covering the spouse as an employee would need to represent that it was responsible for making reinsurance contributions on behalf of the covered lives in order for the entity covering the spouse as a dependent to avail itself of the exemption.

Comment: Several commenters asked that the general principle that reinsurance contributions are not required to be paid more than once with respect to the same covered life be extended to the Patient-Centered Outcomes Research Institute fee for 2015 and beyond by the Treasury Department.

Response: The U.S. Department of the Treasury is responsible for administration of the Patient-Centered Outcomes Research Institute fee, and regulation of that fee is outside the scope of this rulemaking.

Comment: One commenter requested that HHS modify § 153.400 to provide that the secondary coverage exemption in § 153.400(a)(1)(vi) be determined based on the coverage a participant is enrolled in at the time of enrollment regardless of whether this coverage is terminated during the benefit year.

Response: A contributing entity must consider an enrollee's status throughout the benefit year such that if an enrollee in secondary coverage loses his or her primary medical coverage, the secondary coverage will have to account for that enrollee using one of the counting methods under § 153.405 when calculating its reinsurance contributions.

Comment: Several commenters asked that HHS clarify that certain types of coverage, even when provided in combination, are not subject to the contribution requirement. Specifically, they asked that all dental and vision coverage be exempt from the contribution requirement because it is not major medical coverage. The commenters also asked that excepted benefits, prescription drug coverage, and other ancillary benefits such as hearing aid coverage may be offered by the same plan without that combination of coverage becoming subject to the reinsurance contribution requirement.

Response: Any plan not satisfying the definition of major medical coverage as set forth in § 153.20 is not required to make reinsurance contributions.

Comment: One commenter asked HHS to permit contributing entities to submit reinsurance contributions and comply with reporting requirements electronically. The commenter also asked HHS to allow contributing entities flexibility in correcting inadvertent errors when making reinsurance contributions.

Response: We will provide further details on how contributing entities should submit enrollment counts and reinsurance contributions in future guidance. We will work with contributing entities in establishing these operational processes.

j. Reinsurance Contributions and Enrollees Residing in the Territories

Section 1323(a)(1) of the Affordable Care Act provides that a U.S. territory may establish an Exchange, and any territory that elects to establish an Exchange will be "treated as a State" for purposes of the Exchange standards in sections 1311 through 1313 of the Affordable Care Act. In a letter dated December 10, 2012 to the governors of the U.S. territories, HHS stated that "if a territory establishes an approved Exchange, it may elect to establish a transitional reinsurance program . . . consistent with the provisions in section 1341 . . . of the Affordable Care Act." That letter further stated that if a territory does not establish a transitional reinsurance program, HHS would not do so on the territory's behalf, and that in order to operate a reinsurance program for the 2014 benefit year, the territory was required to notify HHS of its intention to do so by March 1, 2013. No territory has notified HHS of an intention to operate a reinsurance program.

We proposed in § 153.400(a)(1)(v) the following exception for when a contributing entity must make reinsurance contributions for its self-insured group health plans and health insurance coverage: To the extent that the coverage applies to enrollees with primary residence in a territory when that territory does not operate a reinsurance program, the contributing entity would not be required to make reinsurance contributions for those enrollees. We proposed that a contributing entity be permitted to use any reasonable method to determine the primary residence of an enrollee, including using the last-known mailing address of the principal subscriber on the enrollee's policy. We are finalizing this provision as proposed.

Comment: Several commenters supported our proposal to exempt from the reinsurance contribution obligation enrollees who reside in a territory that does not operate a reinsurance program. One commenter asked that HHS amend the proposal to exempt enrollees in a major medical plan that is based or administered in a territory.

Response: We are finalizing this provision as proposed. It is possible that a major medical plan based or administered in a territory that does not operate a reinsurance program may have enrollees in the 50 States and the District of Columbia. As noted in the proposed rule, this provision aligns with the goals of the reinsurance program because reinsurance contributions would only be required with respect to those jurisdictions that benefit from the premium stabilization effects of the reinsurance program. Additionally, we note that a contributing entity is not required to allocate its covered lives by primary residence between the territories, on the one hand, and the 50 States and the District of Columbia, on the other hand, and must do so only if it wishes to exclude covered lives from reinsurance contributions under § 153.400(a)(1)(v).

k. Form 5500 Counting Method

In the 2014 Payment Notice (78 FR 15463), we established counting methods for calculating the annual enrollment for determining reinsurance contributions for self-insured group health plans, fully insured health plans, and plans that are partially insured and partially self-insured. One of the allowable methods for a self-insured group health plan is the Form 5500 counting method in § 153.405(e)(3). In the proposed rule, we amended § 153.405(e)(3), by changing the references from "benefit year" to "plan year" to clarify that a self-insured group health plan may use the enrollment set forth in the Form 5500 even if the group health plan is based on a plan year (as defined for the purposes of the Form 5500) other than the benefit year. Therefore, a self-insured group health plan that chooses to use the Form 5500 counting method and offers self-only

coverage would calculate the number of lives covered by adding the total participants covered at the beginning and end of the most current plan year, as reported on the Form 5500, then dividing by two. A self-insured group health plan that offers both self-only coverage and coverage other than self-only coverage would calculate the number of lives covered by adding the total participants covered at the beginning and the end of the most current plan year, as reported on the Form 5500. We are finalizing this amendment as proposed.

Comment: Several commenters supported our proposed amendment to the Form 5500 counting method. One commenter suggested modifying this amendment to make clear that a self-insured group health plan that offers both self-only coverage and coverage other than self-only coverage would calculate the number of lives covered by adding the numbers of total participants covered at the beginning and at the end of the most current plan year, as reported on the Form 5500 and then dividing by two to avoid double counting enrollees.

Response: We are finalizing this technical amendment as proposed. The Form 5500 counting method does not result in the double counting of enrollees. As discussed in the "2013 Instructions for Form 5500, Annual Return/Report of Employee Benefit Plan" [31] a "participant" does not include covered dependents, accounting for the counting method used for coverage other than self-only.

4. Provisions for the Temporary Risk Corridors Program

a. Definitions

In the first final Program Integrity Rule, we provided that, in 45 CFR part 153, subpart F regarding risk corridors, any reference to a "qualified health plan" or "QHP" includes plans that are the "same" as a QHP or "substantially the same" as a QHP. We noted that plans that are substantially the same as a QHP will continue to be considered substantially the same even if they differ in terms of benefits, premiums, provider networks, or cost-sharing structure, provided that the differences are tied directly and exclusively to Federal or State requirements or prohibitions on the coverage of benefits that apply differently to plans depending on whether they are offered through an Exchange or outside of an Exchange. In the first final Program Integrity Rule, we recognized that OPM might issue additional standards for multi-State plan (MSP) issuers in the future (for example, standards related to provider networks) that could create situations analogous to the ones we discuss above. In the proposed rule, we considered whether a plan that differs from a QHP (as defined at § 155.20) based on OPM standards would be considered to be "substantially the same" as a QHP for the purposes of participating in the risk corridors program, and stated that we were considering amending the definition of a QHP at § 153.500 in response. Because OPM has not issued MSP standards that create such analogous situations, in this final rule, we are not amending the definition of a plan that is substantially the same as a QHP in § 153.500, though we will consider doing so in the future.

Comment: One commenter recommended that any difference in QHPs offered off-Exchange that result from a requirement imposed by OPM, including differences in provider networks, should not disqualify a QHP from participation in the risk corridors program. The commenter also requested that HHS allow plans that include an optional rider to be included in the definition of "substantially the same."

Response: The first final Program Integrity rule provided that a plan offered outside of an Exchange is substantially the same as an Exchange QHP, and thus will participate in the risk corridors program, if it differs from an Exchange QHP with respect to benefits, premiums, cost-sharing structure, and provider networks, provided that such differences are tied directly and exclusively to Federal or State benefit requirements that apply differently to plans depending on whether they are offered through or outside an Exchange. As discussed above, we will consider amending this standard if OPM promulgates standards that require analogous differences between QHPs offered through or outside Exchanges. We are not amending this definition to include optional riders to the extent these riders are not a result of differing Federal or State requirements with respect to Exchange and off-Exchange plans.

b. Compliance With Risk Corridors Standards

In the proposed rule, we outlined our proposed process for validating risk corridors data submissions and enforcing compliance with the risk corridors requirements in subpart F of 45 CFR part 153. Because the MLR and risk corridors programs will require similar data, we proposed to closely align the data submission, data validation, audit provisions, and sanctions for the two programs.

For the 2014 benefit year, we proposed to collect risk corridors data through the same form used for MLR data collection, at the same time (July 31st of the year following the applicable benefit year). We noted that we would modify the collection instrument and adjust the operational aspects of data submission as necessary to ensure that the data collection process adheres to the requirements for both programs. We would leverage the data validation procedures that are used by the MLR program to uncover data inconsistencies, and would add additional validation steps that would allow us to identify QHP issuers and verify QHP-specific premium information. In addition, we stated that we were considering conducting an internal quality check of risk corridors data to ensure that the information submitted is consistent with information submitted for other programs (for example, premiums and claims data reported on the dedicated distributed data environment). We stated that, similar to the MLR process, we anticipate requiring issuers to resubmit corrected data after risk corridors data errors are identified.

To ensure the integrity of risk corridors data reporting, we proposed in § 153.540(a) to establish HHS authority to conduct post-payment audits of QHP issuers. Because similar data is used in the risk corridors and MLR calculations, we proposed to conduct the risk corridors audits using the existing MLR auditing process set forth at § 158.402 to reduce the time and expense (for both HHS and issuers) of conducting multiple audits on similar data.

The second final Program Integrity Rule provides that a QHP issuer on an FFE that fails to comply with the risk corridors provisions may be subject to decertification or CMPs, but does not extend this remedy to a QHP issuer on a State Exchange. In § 153.540(b), we proposed that HHS have the authority to assess CMPs on QHP issuers in State Exchanges in accordance with the same enforcement and sanction procedures that apply to QHP issuers on FFEs, under § 156.805. We noted that, consistent with our general approach relating to the application of sanctions, we would take various factors into account when determining the amount of a CMP, including an issuer's record of prior compliance with risk corridors requirements, the gravity and the frequency of the violation, and the issuer's demonstrated success in correcting violations that HHS has identified (for example, errors identified

[31] Available at: *http://www.dol.gov/ebsa/pdf/2013-5500inst.pdf.*

in corrective action plans).[32] We received no comments on our proposal. Because we are still developing our enforcement and audit programs for the risk corridors and MLR programs, we are not finalizing our proposed enforcement policy with regard to CMPs at this time. We note that noncompliance with risk corridors data submission requirements may be subject to enforcement actions under the False Claims Act, and that any failure to pay risk corridors charges may be subject to our debt collection rules.

In this final rule, we are finalizing our policy with respect to risk corridors data submission, data validation, and audits, as proposed.

Comment: Some commenters opposed our proposal to combine MLR and risk corridors data submission, data validation, and auditing processes. One commenter disagreed with the proposal to use the same form for reporting MLR and risk corridors data. The commenter stated that MLR and risk corridors calculations and reporting requirements are based upon different definitions and requirements, which would rule out the use of a single form. For example, the commenter noted, the programs use different definitions of group size, and require aggregation to different levels—QHP versus legal entity. The commenter also opposed the proposal to validate risk corridors data with data from the dedicated distributed data environment, because risk corridors data are based upon total claims, including capitation amounts, whereas the dedicated distributed data will include derived encounter values. Another commenter also advised against validating risk corridors data with data from the dedicated distributed data environment because of concerns that the dedicated distributed data environment would not be ready in time or would face short-term operational challenges that would prevent it from being a reliable source of claims data.

Response: We are finalizing our proposal to use data validation procedures that are employed by the MLR program to uncover data inconsistencies, and to add validation steps that would allow us to identify QHP issuers and verify QHP-specific premium information. We do not believe that differences in standards and requirements between the risk corridors and MLR programs preclude the use of a single form because similar data will be collected at the issuer and State level for both programs. We also note that we will make some modifications to the form to capture any additional data, such as QHP-specific premium, that is specific to any one program. We believe that this approach is less burdensome for issuers and will prevent the submission of duplicative information.

We are also finalizing our proposal to conduct an internal quality check of risk corridors data to ensure that the information submitted is consistent with information submitted for other programs. However, in response to comment regarding the appropriateness of validating risk corridors information against data collected through the dedicated distributed environment, we are clarifying that we will only validate risk corridors data against other data sources if the data from the other data sources is sufficiently reliable and can be appropriately compared, including with respect to any data submitted through the dedicated distributed data environment for 2014.

Comment: One commenter was concerned that the proposed data collection program is geared toward fee-for-service payment systems and would not accommodate the unique challenges faced by organizations that operate, at least in part, through capitated or integrated health systems.

Response: We disagree that the data collection program established for the MLR program would not accommodate the experience of capitated or integrated health systems. The MLR data submission template that would be used for the submission of risk corridors data currently accommodates data submission from a variety of insurance and provider models.

Comment: We received several comments that supported our proposal to combine MLR and risk corridors audits as a way to reduce burden for issuers. One commenter additionally suggested that HHS use enrollment weighted selection criteria, identify outliers, and employ pooling methods similar to those used by the IRS for its auditing strategy. Another commenter encouraged HHS to coordinate risk corridors audits with those performed by State Departments of Insurance.

Response: In § 153.540, we are finalizing our proposal to conduct post-payment risk corridors audits using the existing MLR auditing process set forth at § 158.402. We agree that a combined data submission and audit process will reduce burden on issuers. We appreciate commenters' suggestions on the risk corridors audit process. We intend to work closely with State Departments of Insurance to share knowledge and coordinate our audit approach to the extent practicable, in order to prevent duplicative audits in States that review information related to MLR reporting. We intend to issue detailed guidance on the auditing process in the future.

c. Participation in the Risk Corridors Program

Because the premium stabilization programs, including the risk corridors program, are intended to mitigate pricing uncertainty associated with the 2014 market reforms, particularly the rating rules at section 2701 of the PHS Act and § 147.102, we believe that the protections of these programs should be limited to plans that are subject to the premium rating rules. In the proposed rule, we proposed to amend the risk corridors rules to provide that a plan that is not subject to the market reform rules and premium rating rules would not participate in the risk corridors program. We proposed to add paragraph (f) to § 153.510 to provide that the risk corridors program would apply only to QHPs, as defined in § 153.500, including all plans offered through the individual market Exchange or SHOP, regardless of employer size, that are subject to the following provisions within title 45 of the CFR:

- § 147.102 (fair health insurance premiums).
- § 147.104 (guaranteed availability of coverage).
- § 147.106 (guaranteed renewability of coverage).
- § 147.150 (essential health benefits).
- § 156.80 (single risk pool) and subpart B of 45 CFR part 156 (essential health benefits package).

We also proposed that the employee counting method applicable under State law would determine whether a plan is considered to be offered in the small group market for purposes of the risk corridors program, even if the State definition does not take non-full-time employees into account, and thus could include some employers that would be large employers under the Federal definition. We noted that, for purposes of the risk corridors program, permitting the use of a State employee counting method that is inconsistent with the counting method set forth in Federal law differs from the approach taken under the MLR program and the proposed counting method for the risk adjustment program that is described elsewhere in this final rule. Under these programs, non-full-time employees must be counted. We also noted that the State's employee counting method would also be used to determine whether a plan that is not a QHP is part of the non-grandfathered individual or small group market within a State, and

[32] We note that the good faith provision at 45 CFR 156.800(c) will not be applicable in this context because risk corridors activities, such as data submission and payment, begin in 2015.

would, therefore, be part of a QHP issuer's risk corridors data submission under § 153.530.

In this final rule, we are finalizing the risk corridors participation rules as proposed to exclude plans that are not subject to market rules and premium rating rules from participating in the risk corridors program. We are also finalizing our proposal that the employee counting methodology used for the purposes of determining which plans participate in the risk corridors program will be the State employee counting method.

Comment: We received three comments recommending that the experience of plans not compliant with the Affordable Care Act, including transitional plans, should be excluded from the risk corridors calculation, since those plans are not in the same risk pool.

Response: QHP issuers are required to submit risk corridors data for all of their non-grandfathered plans in a market within a State. We are clarifying that this data submission requirement excludes the experience of plans that are not subject to the Affordable Care Act market reform rules, and plans being offered pursuant to the transitional policy announced on November 14, 2013.[33] This is consistent with our single risk pool policy, which bases rate setting on the predicted EHB claims experience of all of an issuer's non-grandfathered plans within the individual or small group market (or merged markets in states that require merging the risk pools) that are subject to the Affordable Care Act's market reform rules, including the single risk pool requirement. As described in this section, only QHPs (as defined in § 153.500) are subject to risk corridors charges and eligible for risk corridors payments, and only if they are plans that are required to comply with specified Affordable Care Act market reform rules previously discussed.

Comment: Some commenters recommended that HHS expand the types of plans that would be subject to the risk corridors program. Some commenters suggested that we expand risk corridors to all plans compliant with the Affordable Care Act, not just plans that are the same or substantially the same as a QHP. One commenter suggested that the risk corridors program should apply to an off-Exchange plan that would otherwise qualify as an Exchange QHP.

Response: Consistent with our current policy, only plans that are QHPs, the same as a QHP, or substantially the same as a QHP (as defined at § 153.500) will make or receive risk corridors payments. We believe that our existing policy preserves the intent of the risk corridors program, which is to share risk and stabilize premiums for QHPs, whether offered through or outside the Exchange. We believe that our expanded definition of a QHP for purposes of risk corridors serves to maintain the program's focus on QHPs while permitting these plans to be offered outside the Exchange, with only such minor variations as are required by law.

Comment: We received several comments that the definition of the small group market should be consistent between the premium stabilization programs, and that the State employee counting method should be used for all Affordable Care Act programs.

Response: As noted earlier in this final rule, we agree that consistency in counting methods across Affordable Care Act programs is important, and we plan to collaborate with other Federal agencies to develop a streamlined counting method in future rulemaking. For purposes of the risk corridors program, we interpret section 1342 of the Affordable Care Act to permit us to defer to State counting methodologies. However, as noted above, we interpret the employer size definitions in the Affordable Care Act to include non-full-time employees for purposes of determining small group status for purposes of risk adjustment. We therefore are finalizing our proposal that the employee counting methodology used for the purposes of determining which plans participate in the risk corridors program will be the State employee counting method.

d. Adjustment for the Transitional Policy

As previously noted, on November 14, 2013, the Federal government announced a transitional policy under which it will not consider certain health insurance coverage in the individual or small group markets that is renewed for a policy year starting after January 1, 2014, under certain conditions to be out of compliance with specified 2014 market rules, and requested that States adopt a similar non-enforcement policy.[34] CMS noted in a letter to the insurance commissioners of the 50 States and the District of Columbia that while the transitional policy would not have been anticipated by issuers in setting rates for 2014, the risk corridors program should help ameliorate unanticipated changes in premium revenue as a result of this policy. We also stated that we intended to explore ways to modify the risk corridors program to address any unanticipated effects of this policy.

In our proposed rule, we considered an adjustment to the risk corridors formula for the 2014 benefit year that would help to further mitigate any unexpected losses for issuers of plans subject to risk corridors attributable to the effects of the transitional policy, and noted that we were considering approaches that would limit the impact of the policy on the Federal budget. We considered implementing an adjustment to the risk corridors formula set forth in subpart F of part 153 for each of the individual and small group markets by increasing the profit margin floor (from 3 percent of after-tax profits) and the allowable administrative costs ceiling (from 20 percent of after-tax profits) in an amount sufficient to offset the effects of the transitional policy upon the claims costs of a model plan. We stated that this adjustment could increase a QHP issuer's risk corridors ratio and its risk corridors payment amount to help offset losses that might occur under the transitional policy as a result of increased claims costs not accounted for when setting 2014 premiums. We stated that we were considering applying this adjustment only to plans whose allowable costs (as defined at § 153.500) are at least 80 percent of their after-tax premiums, because issuers under this threshold would generally be required to pay out MLR rebates to consumers. We stated that because we believed that the Statewide effect on this risk pool would increase with an increase in the percentage enrollment in transitional plans in the State, we were considering having the State-specific percentage adjustment to the risk corridors formula also vary with the percentage enrollment in these transitional plans in the State. To estimate this State-specific effect of the transitional policy on average claims costs, we proposed to require all issuers participating in the individual and small group markets in a State to submit to HHS a member-month enrollment count for transitional plans and non-transitional plans in the individual and small group markets prior to the risk corridors July 31, 2015 data submission.

In the proposed rule, we stated we were also considering calculating the State-specific percentage adjustment by analyzing the effects of the transitional

[33] Letter to Insurance Commissioners, Center for Consumer Information and Insurance Oversight, November 14, 2013. Available at: *http://www.cms.gov/CCIIO/Resources/Letters/Downloads/commissioner-letter-11-14-2013.PDF.*

[34] Letter to Insurance Commissioners, Center for Consumer Information and Insurance Oversight, November 14, 2013. Available at: *http://www.cms.gov/CCIIO/Resources/Letters/Downloads/commissioner-letter-11-14-2013.PDF.*

policy upon a plan with the following specified characteristics: allowable costs (including claims) equal to 80 percent of premiums, Federal income taxes equal to 35 percent of pre-tax profits, other tax liability equal to 7.5 percent of premiums, and other administrative costs equal to 8 percent of premiums. We proposed to estimate the effect of the transitional policy upon the model plan's claims costs by assuming that allowable costs (including claims) among the transitional plans are 80 percent of the allowable costs that would have resulted from the broad risk pool, in the absence of the transitional policy. HHS would analyze that data, and publish the State-specific adjustments that issuers would use in the risk corridors calculations for the 2014 benefit year.

Finally, in the proposed rule, we stated that we were considering modifying the MLR formula to ensure that the proposed adjustment to the risk corridors program does not distort the implementation of MLR requirements, so that the rebates that would be owed absent the transitional policy and this adjustment would not substantially change.

We are finalizing the risk corridors adjustment policy as proposed. Consistent with our proposal, we are adding a definition of "adjustment percentage" to § 153.500, and are amending the definitions of risk corridors "profits" and "allowable administrative costs" in § 153.500 to account for the adjustment percentage. We are also adding a definition of "transitional State" to § 153.500. Finally, we are adding paragraph (e) to § 153.530 to require health insurance issuers in the individual and small group markets to submit enrollment data for the risk corridors adjustment. We are making a conforming change to § 153.530(d) to clarify that the July 31st submission deadline for risk corridors data does not apply to the enrollment data specified in § 153.530(e). We project that these changes, in combination with the changes to the reinsurance program finalized in this rule, will result in net payments that are budget neutral in 2014. We intend to implement this program in a budget neutral manner, and may make future adjustments, either upward or downward to this program (for example, as discussed below, we may modify the ceiling on allowable administrative costs) to the extent necessary to achieve this goal.

Comment: Several commenters recommended that HHS implement a risk corridors adjustment based on a national calculation instead of State-level calculations, as we proposed. One commenter noted that the effect of the transitional policy on the State risk pool could vary by factors that we did not propose to account for, such as whether or not the State had a guaranteed issue law prior to 2014, and suggested that a national adjustment would help to mitigate the effect of these differences. Alternatively, the commenter suggested that HHS could provide an adjustment for different categories of States. A few commenters suggested that a national adjustment would reduce administrative burden on issuers and would be simpler to implement. However, several other commenters supported our approach of implementing a State-level adjustment, including the proposed approach of applying the adjustment based on enrollment in non-compliant plans within a State.

Response: We are finalizing our proposed approach to determine the risk corridors adjustment on a State-by-State basis. We believe that a State-based approach provides an appropriate means of accounting for differences in market composition, enrollment in transitional plans, and adoption of the transitional policy between States. Because a national approach would still require issuers to submit enrollment information to HHS in order to determine an accurate national risk corridors adjustment, we do not believe that a State-based approach would prove more burdensome for issuers.

Comment: One commenter recommended that the adjustment be extended through all three years of the temporary risk corridors program. However, another commenter believed that the adjustment should apply for the 2014 benefit year only, since issuers will be able to reflect the effect of the transitional policy in their pricing for subsequent benefit years.

Response: We agree with the comment that issuers will be able to reflect the effect of the transitional policy in their pricing for benefit years following 2014, and thus this specific risk corridors adjustment is needed for the 2014 benefit year only. Therefore, we are finalizing the risk corridors adjustment policy to apply the adjustment to eligible QHP issuers in transitional States for the 2014 benefit year only. However, as we discuss below, we are considering further changes to the risk corridors program.

Comment: Several commenters recommended that we apply the risk corridors transitional adjustment to all plans compliant with the Affordable Care Act, not just QHPs that are subject to the risk corridors program. Some commenters requested that any changes to the risk corridors formula be applied uniformly to all issuers, including issuers of plans that are not compliant with Affordable Care Act requirements, rather than limited to issuers offering transitional policies. One commenter supported defining "transitional plans" to include "early renewal" plans that have been renewed in late 2013 and that will not be required to comply with the Affordable Care Act until the end of 2014.

Response: Because, as described above, the risk corridors program is intended to share risk and stabilize premiums for QHPs and substantially similar off-Exchange plans that differ only due to legal requirements, we decline to expand the participation criteria for the risk corridors transitional adjustment. Consistent with our existing regulations set forth in subpart F of part 153, any risk corridors payment or charge amount, including any adjusted payment or charge amount resulting from this transitional policy, will be calculated for a QHP issuer in proportion to the premium revenue that the issuer receives from its QHPs, as defined in § 153.500. Plans that do not comply with the Affordable Care Act market reforms will not participate in the risk corridors program, and data from these plans will not be included in a QHP issuer's risk corridors calculation, or the calculation of its risk corridors adjustment percentage.

We are also finalizing our proposal that a QHP issuer in a transitional State will receive the risk corridors adjustment only if its allowable costs are above 80 percent of after-tax premiums, and will receive that adjustment irrespective of whether the issuer offers transitional policies. Because the transitional policy may affect the overall risk pool in a transitional State, we believe that it is appropriate to provide the adjustment to a QHP issuer in that State even if the issuer does not offer a transitional policy.

Comment: Some commenters recommended that HHS completely remove the administrative costs ceiling for risk corridors. One of these commenters agreed with HHS's proposal that the allowable costs must be at least 80 percent of after-tax premiums, and another agreed with setting the profit floor according to the methodology outlined in the proposed rule. Another commenter recommended that the risk corridors formula be changed to reflect a standard ceiling of 22 percent for allowable administrative costs.

Response: As we discussed in the proposed rule, the adjustment to the risk

corridors calculation is meant to mitigate the effect of the transitional policy on QHP issuers in transitional States, and not in all States. However, we understand that issuers in all States are experiencing additional administrative costs as a result of transitional issues. We are carefully analyzing this proposal, and may propose implementing it in future rulemaking. If so, this change would apply in all States for the 2015 benefit year. We would also consider making corresponding changes to the risk corridors profit floor and to the MLR regulations.

Comment: We received comments on the interaction between the proposed risk corridors adjustment and MLR reporting. One commenter supported the proposal to modify the MLR formula so that the calculation of MLR rebates would not be affected by the transitional adjustment to the risk corridors program. One commenter believed that there was no need to modify the MLR formula because the formula would automatically account for any distortions, while another commenter recommended that HHS maintain the current structure of the MLR formula in order to prevent issuer confusion. We also received one comment suggesting that issuers should be able to account for administrative expenses that are related to implementing the risk corridors transitional adjustment as part of their MLR calculation for the following year.

Response: We are providing that issuers should exclude the effect of this transitional policy risk corridors adjustment from their MLR calculations. We are making conforming changes to the MLR reporting requirements in §§ 158.130(b)(5), 158.140(b)(4)(ii), and 158.240(c)(2). We note that this policy will not change the existing structure of the MLR or risk corridors formulas. Under this policy, issuers in the transitional States will use unadjusted risk corridors amounts (that is, a risk corridors transfer calculated as if the adjustment percentage, as defined in § 153.500, is equal to zero percent) in their MLR calculations.

Comment: One commenter recommended that HHS collect enrollment counts by the middle of the year so that issuers would be able to estimate their risk corridors transitional adjustment before the end of the year, in time for year-end financial reporting. Another commenter requested that issuers should be permitted to reduce the impact of the transitional policy through mid-year premium rate changes in the small group market that would allow issuers to file rates as early as April 1, 2014.

Response: We are clarifying that we will collect transitional plan enrollment information and publish each State-specific adjustment in advance of when issuers would need to prepare their year-end financial reports. In response to comments, we are adding § 153.530(e) and making a conforming change to § 153.530(d) to specify that, although the July 31 deadline will continue to apply to the submission of risk corridors data that is necessary to calculate allowable costs and the target amount, the July 31 deadline will not apply to the collection of enrollment data for the risk corridors adjustment. As mentioned above, we intend to collect enrollment information before the July 31st deadline for submitting risk corridors data, so that issuers will know the risk corridors adjustment amount that applies to them before they are required to submit data on allowable costs and the target amount for the purposes of the risk corridors calculation. We currently anticipate conducting this collection at the beginning of 2015.

Comment: One commenter asked HHS to clarify that, for purposes of the target amount calculation, Federal income tax cannot be negative (that is, the Federal income tax amount would have a floor of zero).

Response: We clarify that, because the Federal income tax effects of losses in one plan can be offset by gains in another plan, the risk corridors formula will account for negative Federal income tax, and that we will not apply a floor to the Federal income tax amount used in the risk corridors formula.

5. Distributed Data Collection for the HHS-Operated Risk Adjustment and Reinsurance Programs

a. Discrepancy Resolution Process

(i) Confirmation of HHS Dedicated Distributed Data Environment Reports

We proposed an iterative discrepancy reporting process that would require an issuer of a risk adjustment covered plan or a reinsurance-eligible plan to notify HHS in a timely fashion of data and calculation discrepancies related to the data the issuer uploaded to its dedicated distributed data environment. This process would allow HHS and issuers sufficient time to resolve discrepancies, prior to HHS notifying issuers of final risk adjustment payments and charges and reinsurance payments. This process would also enable HHS to identify and address issues that affect multiple issuers throughout the benefit year.

Interim dedicated distributed data environment reports: In 2014, HHS anticipates sending interim dedicated distributed data environment reports to issuers of risk adjustment covered plans and reinsurance-eligible plans that have loaded data onto their dedicated distributed data environments. We will also send interim reports to issuers of risk adjustment covered plans and reinsurance-eligible plans that do not load data to verify this result. Issuers of risk adjustment covered plans will receive interim reports that include preliminary risk adjustment information based on this data, and issuers of reinsurance-eligible plans will receive interim reports that include an estimate of the issuer's aggregated total claims eligible for reinsurance payments based on this data. We proposed in § 153.710(d) that within 30 calendar days of the date of an interim report, the issuer would be required either to confirm to HHS that the information in the interim report accurately reflects the data to which the issuer has provided access to HHS through its dedicated distributed data environment in accordance with § 153.700(a) for the timeframe specified in the report, or else to describe to HHS any discrepancy it identifies in the interim report. Following the identification of a discrepancy in an interim report, HHS would review the evidence submitted by the issuer, along with any other relevant data, and determine if the preliminary risk adjustment information or estimated payment amount at issue was properly calculated using the applicable data.

We note that for the issuer and HHS to effectively address and resolve discrepancies through the proposed interim reporting process, once an issuer's dedicated distributed data environment is established, the issuer will be required under § 153.700(a), on a quarterly basis, to make a complete and current enrollment file accessible to HHS through the dedicated distributed data environment, and make good faith efforts to make accurate and current claims files accessible to HHS through the dedicated distributed data environment. An issuer may later (up until April 30th of the year after the benefit year, as provided for in § 153.730) adjust these files with the most current information to account for changing enrollments or more current adjudications of claims in later periods.

Final dedicated distributed data environment report: We proposed that HHS would provide issuers with a final dedicated distributed data environment report following the applicable benefit year, after the April 30th data submission deadline. The final dedicated distributed data environment

report will include final risk scores and claims amounts eligible for reinsurance payments, each calculated from the issuer's data that was timely loaded onto the dedicated distributed data environment. As with the interim reports discussed above, we proposed in § 153.710(e) that the issuer be required, within 15 calendar days of the date of the final report, to either confirm to HHS that the information in the final dedicated distributed data environment report accurately reflects the data to which the issuer has provided access to HHS through its dedicated distributed data environment in accordance with § 153.700(a) for the benefit year specified in the report, or describe to HHS any discrepancy it identifies in the final report.

Notification of payments and charges: Last, as required under § 153.310(e) and § 153.240(b)(1)(ii), HHS will provide a notification to issuers specifying the risk adjustment and reinsurance payments due and risk adjustment charges owed for the applicable benefit year by June 30th of the year following the applicable benefit year. We anticipate providing this notification in the form of a report. We also anticipate providing a report on cost-sharing reduction reconciliation payments and charges for that benefit year in the same timeframe. Although we anticipate that the interim and final dedicated distributed data environment reports will permit HHS and issuers to resolve most data and payment discrepancies for risk adjustment and reinsurance before the June 30th report is issued, we recognize that some discrepancies might remain unresolved. Therefore, we proposed in § 153.710(f) that if a discrepancy that is first identified in an interim or final dedicated distributed data environment report in accordance with § 153.710(d)(2) or § 153.710(e)(2) remains unresolved after issuance of the June 30th report, an issuer of a risk adjustment covered plan or reinsurance-eligible plan is permitted to make a request for reconsideration using the process described in § 156.1220(a). To promote the goals of the premium stabilization programs and to ensure that risk adjustment and reinsurance payments are provided to an issuer of a risk adjustment covered plan or reinsurance-eligible plan in a timely fashion, we proposed to assess charges and make payments based on the amounts listed in the June 30th report, whether or not the issuer had submitted a request for reconsideration under § 156.1220(a), and to later correct any charges or payments determined to be inaccurate under the administrative appeals process.

(ii) Reporting of Payments and Charges Under Reconsideration

We noted in the proposed rule that because risk adjustment payment and charge amounts and reinsurance payment amounts are factors in an issuer's risk corridors and MLR calculations, a delay in resolving final risk adjustment payments and charges and reinsurance payments could make it difficult for issuers to comply with reporting requirements under the risk corridors and MLR programs. Therefore, to clarify how issuers are to comply with these reporting requirements, we proposed in § 153.710(g)(1) that, notwithstanding any discrepancy report made under § 153.710(d)(2) or (e)(2), or any request for reconsideration under § 156.1220(a), unless the dispute has been resolved, an issuer be required to report, as applicable, for purposes of the risk corridors and MLR programs, the risk adjustment or reinsurance payment to be made to the Federal government, or the risk adjustment charge assessed by the Federal government, as reflected in the June 30th report.

If the amount of cost-sharing reductions a QHP issuer has provided is at issue because the issuer requested reconsideration of a cost-sharing reduction reconciliation payment or charge under § 156.1220(a), we proposed that for the purposes of the risk corridors and the MLR program, a QHP issuer would be required to report a cost-sharing reduction amount equal to the amount of the advance payments of cost-sharing reductions paid to the issuer by HHS for the benefit year as reflected in the HHS report on cost-sharing reduction reconciliation payments and charges. Additionally, we proposed that if a QHP issuer requests reconsideration of risk corridors payments or charges under § 156.1220(a), then for purposes of MLR reporting, the QHP issuer would be required to report the risk corridors payment to be made to the Federal government or charge assessed by the Federal government as reflected in the notification provided under § 153.510(d).

Finally, we proposed in § 153.710(g)(2) that an issuer be required to report any adjustment made following any discrepancy report made under paragraph (d)(2) or (e)(2), or any request for reconsideration under § 156.1220(a) with respect to any risk adjustment payment or charge, including an assessment of risk adjustment user fees, reinsurance payment, cost-sharing reconciliation payment or charge, or risk corridors payment or charge, or following any audit, where the adjustment has not been accounted for in a prior risk corridors or MLR report, in the next following risk corridors and MLR report.

We are finalizing these provisions as proposed.

Comment: Several commenters supported the interim and final dedicated distributed data environment reports and discrepancy process, including the requirement to upload data on a quarterly basis. One commenter requested that HHS require, not merely allow, issuers to notify HHS in a timely fashion of data and calculation discrepancies.

Response: Under § 153.710(d) and § 153.710(e), an issuer will be required to notify HHS of any discrepancies within 30 calendar days of the date of an interim dedicated distributed data environment report and within 15 calendar days of the date of the final dedicated distributed data environment report.

Comment: One commenter stated that the quarterly reporting of data on an issuer's dedicated distributed data environment should not be required until HHS has provided issuers with the necessary documents, software, and support needed to ensure that the dedicated distributed data environment is running properly, with additional time provided for issuers to implement the software and test the system.

Response: We will not require issuers to make data available on the dedicated distributed data environment until we have provided them with the necessary documents, software, support, and time to establish the environment. We will issue future guidance regarding the initiation of quarterly data reporting. At that time, we will ask that issuers make a complete and current enrollment file accessible to HHS through the dedicated distributed data environment on a quarterly basis, while making good faith efforts to make accurate and current claims files accessible to HHS through that environment. As we stated in the proposed rule, an issuer may later (up until April 30th of the year after the benefit year, as provided for in § 153.730) adjust these files with the most current information to account for changing enrollments or more current adjudications of claims in later periods. However, we believe it is critical for issuers to provide quarterly uploads of enrollment and claims files to permit issuers and HHS to monitor data collection.

Comment: Many commenters asked for details on the timing of the interim reports. One commenter recommended

that HHS require quarterly reporting by the issuer to the dedicated distributed data environment one month after the end of each quarter. Commenters stressed the importance of receiving interim reports from HHS in late 2014 to early 2015 because these reports could be used for 2016 pricing and financial reporting obligations which occur prior to the June 30th notification deadline.

Response: We will issue future guidance regarding the timing of the interim reports.

Comment: Several commenters supported receiving interim reports identifying preliminary risk scores and estimates of the issuer's aggregated total claims eligible for reinsurance payments. Many commenters asked that HHS include additional information to enable calculation of risk adjustment payment transfers, and reinsurance payment amounts.

Specifically, commenters requested that the risk adjustment interim reports include: (1) The State average premium; (2) market average risk score; (3) preliminary Statewide risk score; (4) the geographic cost factors; (5) the two market-wide denominators (weighted adjusted risk score and weighted allowed rating factors) needed for the risk adjustment transfer formula; (6) enrollment counts by geographic region; (7) member-level (de-identified) data contributing to the risk score: risk adjusting categories, plan level or plan ID, age, sex, enrollment period, rating area and subsidy information, recommending that such information be displayed for each month included in the interim report; (8) AV; (9) induced demand factor; and (10) average rate factor. One commenter stated that since interim risk score calculations would not reflect true relative risk, HHS should publish statistical reports comparing the issuer with market average demographics, proportion of claims with HCCs, most prevalent HCCs, and other pertinent data.

Regarding the interim report for reinsurance, commenters asked that the interim reports include: (1) Member level claims amounts by month; (2) claim type; and (3) subsidy information necessary to validate the cost-sharing deduction.

Commenters also asked that HHS consult with issuers about the data submission requirements to accommodate diverse market practices due to provider submission patterns, State-specific regulations and different delivery system models.

Response: We will provide more details on the content of the interim reports in future rulemaking or guidance, as appropriate.

Comment: Several commenters suggested that HHS provide information to issuers regarding data completeness or accuracy, data quality and ways to improve data submission in time for issuers to evaluate and correct such data issues prior to the final data submission deadline.

Response: As stated in the proposed rule, as part of the process for making data available to HHS on a dedicated distributed data environment, we anticipate providing an issuer a transactional process report that will identify data that has been attempted to be uploaded, but that has been rejected along with error codes. To fulfill its obligation to make these files available to HHS, an issuer will be required to either correct or accept the rejection of this data for the submission process to be considered complete. We also intend to provide summarized reports of file processing.

Comment: Some commenters supported the 15-calendar-day deadline to respond to the final dedicated distributed data environment report, while others asked that HHS provide 30 calendar days to respond to the final dedicated distributed data environment report.

Response: The shorter 15-calendar-day reporting timeframe for the final dedicated distributed data environment report is necessary so that HHS can notify issuers of their final risk adjustment payments and charges and final reinsurance payments by June 30th of the year following the applicable benefit year, as required under § 153.310(e) and § 153.240(b)(1)(ii).

Comment: One commenter asked that HHS develop penalties for non-compliance with the standards for the submission of data for the risk adjustment program.

Response: In § 153.740(a), we established HHS's authority to impose CMPs on issuers of risk adjustment covered plans who fail to provide HHS with access to the required data in such environment in accordance with § 153.700(a) or otherwise fail to comply with the requirements of §§ 153.700 through 153.730, or fail to adhere to the risk adjustment data submission and data storage requirements set forth in §§ 153.610 through 153.630. Additionally, under § 153.740(b), HHS will assess a default risk adjustment charge if an issuer of a risk adjustment covered plan fails to establish a dedicated distributed data environment or fails to provide HHS with access to the required data in such environment in accordance with § 153.610(a), § 153.700, § 153.710, or § 153.730 such that HHS cannot apply the applicable Federally certified risk adjustment methodology to calculate the risk adjustment payment transfer amount.

b. Default Risk Adjustment Charge

As described in the second final Program Integrity Rule, if an issuer does not establish a dedicated distributed data environment or submits inadequate risk adjustment data, HHS would not have the required risk adjustment data from the issuer to calculate risk scores or payment transfers for the issuer. As a result, HHS would not be able to properly calculate risk adjustment payments and charges for the entire applicable market for the State. Under § 153.740(b), if an issuer of a risk adjustment covered plan fails to establish a dedicated distributed data environment or fails to provide HHS with access to risk adjustment data in such environment by April 30th of the year following the applicable benefit year in accordance with §§ 153.610(a), 153.700, 153.710, or 153.730 such that HHS cannot apply its Federally certified risk adjustment methodology to calculate the plan's risk adjustment payment transfer amount in a timely fashion, HHS will assess a default risk adjustment charge.

As described in the second final Program Integrity Rule, the total risk adjustment default charge for a risk adjustment covered plan would equal a per member per month (PMPM) amount multiplied by the plan's enrollment.

$$T_n = C_n * E_n$$

Where:

T_n = total default risk adjustment charge for a plan n;
C_n = the PMPM amount for plan n; and
E_n = the total enrollment (total billable member months) for plan n.

In the second final Program Integrity Rule, we provided that E_n could be calculated using an enrollment count provided by the issuer, using enrollment data from the issuer's MLR and risk corridors filings for the applicable benefit year, or using other reliable data sources.

We considered several methods to calculate C_n, the PMPM amount for a plan. As discussed in the proposed Program Integrity Rule, one method would be to set a PMPM amount that is equal to the highest PMPM transfer charge that HHS calculates based on risk adjustment data submitted by risk adjustment covered plans in the applicable risk pool in the applicable market in the State. Such a method could yield a PMPM amount that would reflect a PMPM charge that reflects the

high end of the PMPM distribution in certain States. However, in a situation in which the risk adjustment covered plans that provide the necessary risk adjustment data have very similar risk scores, a PMPM amount calculated under this method may yield a relatively low default risk adjustment charge, and fail to provide adequate incentive for prompt establishment of a compliant dedicated distributed data environment.

A second option we considered was to assess a PMPM amount based on the standard deviation of the PMPM charge among all risk adjustment covered plans in the applicable risk pool in the applicable market in the State. The PMPM amount used to calculate the default risk adjustment charge would be an amount equal to the mean PMPM amount plus two such standard deviations. Such an approach could also yield a PMPM amount that is high but reflects the PMPM distribution in certain situations, but, again, low in others. The amount might also be quite unpredictable *ex ante*.

The third option we considered was to assess a charge equal to a fixed percentage of the Statewide average premium, which would be calculated as the enrollment-weighted mean of all risk adjustment covered plan average premiums in the applicable risk pool in the applicable market in the State. This option might be relatively straightforward to implement, but would yield a charge that is not linked to the distribution of PMPM amounts within the relevant risk pool in the market in the State.

We are finalizing an approach in which we will assess a PMPM default charge equal to the product of the Statewide average premium (expressed as a PMPM amount) for a risk pool and the 75th percentile plan risk transfer amount expressed as a percentage of the respective Statewide average PMPM premiums for the risk pool. The nationwide percentile would reflect only plans in States where HHS is operating the risk adjustment program and would be calculated based on the absolute value of plan risk transfer amounts. The PMPM amount determined using the method described here would be multiplied by the non-compliant plan's enrollment, as determined using the sources finalized in the second final Program Integrity Rule, to establish the plan's total default risk adjustment charge.

Comment: Several commenters stated they supported a default risk adjustment charge that would be understood by issuers and that would encourage compliance. Some commenters supported using the greatest of the three proposed methodologies for calculating the default charge. Those commenters suggested that where there are a limited number of issuers in a market in a State, an alternate approach to the standard deviation-based methodology should be taken, such as one that relies on nationwide data. Another commenter suggested that the default charge be set at the charge that would be two standard deviations above the mean charge in a market for the first instance of noncompliance; and at a higher rate, such as the highest PMPM charge among risk adjustment plans in the risk pool, for a second instance of noncompliance in consecutive benefit years.

Response: We are finalizing an approach in which the default PMPM charge is set at a fixed percentage of the Statewide average premium, which would be calculated as the enrollment-weighted mean of all risk adjustment covered plan average premiums in the applicable risk pool in the applicable market in the State in which the non-reporting plan operates. To calculate the fixed percentage, HHS would calculate the absolute value of the risk transfer PMPM amount of each plan in a State risk pool as a percentage of the Statewide average premium for the State risk pool. These percentages would then be used to rank all transfers as a percentage of Statewide average premium in the same risk pool in all States where HHS operates the risk adjustment program. We would select the fixed percentage of Statewide average premium yielded at the 75th percentile of this distribution of transfers, then multiply this percentage by the Statewide average PMPM premium for the risk pool in which the non-reporting plan operates. We will monitor the default charges resulting from this methodology and may adjust the percentile at which we assess the appropriate fixed percentage to apply the default charge in future rulemaking.

c. Clarification of the Good Faith Safe Harbor

In the second final Program Integrity rule, we finalized § 153.740(a), which permits HHS to impose CMPs upon issuers of risk adjustment covered plans and reinsurance-eligible plans for failure to adhere to certain standards relating to their dedicated distributed data environments. In the preamble to that rule, we stated that if we are able to determine that an issuer of a risk adjustment covered plan or reinsurance-eligible plan is making good faith efforts to comply with the standards set forth in § 153.740(a), consistent with our policy codified at § 156.800(c),[35] we would not seek to impose CMPs for noncompliance with those standards during 2014 (78 FR 65061). We further stated: "However, we note that nothing in this provision prohibits HHS from imposing CMPs in 2015 for noncompliance that occurred in 2014." We seek to clarify that this statement does not mean that HHS takes the position that it could impose CMPs for noncompliance with respect to 2014 standards, even if the issuer attempted in good faith to comply, simply by waiting until 2015.

We intended to convey that the good faith safe harbor does not apply to non-compliance with dedicated distributed data environment standards applicable during 2015, *even if the non-compliance in 2015 relates to data for the 2014 benefit year.* In 2014, issuers must establish dedicated distributed data environments and load data according to a quarterly schedule to be provided by HHS. The good faith safe harbor would apply, for example, to noncompliance with the 2014 schedule for establishing a dedicated distributed data environment and loading data. However, the data loading schedule applicable to 2014 risk adjustment and reinsurance data extends into 2015 (the final loading deadline is April 30, 2015, which will enable HHS to calculate risk adjustment payments and charges and reinsurance payments for the 2014 benefit year by June 30, 2015), and at this time, the good faith safe harbor does not extend to noncompliance with any 2015 obligations, even if those 2015 obligations apply with respect to 2014 data. As we stated in the preamble to the Program Integrity final rules (78 FR 54070 and 78 FR 65046), at the appropriate time, we may consider extending this good-faith compliance safe harbor.

We further note that our clarification of this preamble language does not preclude application of the good faith safe harbor under § 156.800(c) to noncompliance actions that occurred in 2013 with respect to 2014 standards.

D. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

1. Election To Operate an Exchange After 2014

We proposed to reduce the time that the State must have in effect an approved or conditionally approved Exchange Blueprint and readiness assessment from 12 months to 6.5 months prior to the Exchange's first

[35] 45 CFR 156.800(c) was finalized in the first final Program Integrity Final Rule.

effective date of coverage. HHS learned through the process of conditionally approving the first generation of State Exchanges that it is challenging to make an accurate assessment of a State's progress and its ability to complete an Exchange build 10 months prior to open enrollment and a year prior to the first date that insurance coverage for consumers would become effective. In addition, we believe that this amendment will give States more time prior to approval of the Exchange Blueprint to prepare for the transition from an FFE or State Partnership Exchange model to a State Exchange. We proposed to amend § 155.106(a)(2) by moving the deadline for the approval of the Exchange Blueprint for those States electing to establish and operate an Exchange after 2014 to June 15th of the previous plan year rather than January 1st of the previous plan year. We also proposed in the preamble to the proposed rule that the Exchange Blueprint application would be submitted on June 1st instead of on November 15th. This new timeframe will enable HHS to gauge the State's actual technical, business and operational progress as more indicative milestones should be reached by June 15th. We are finalizing the amendment to § 155.106(a)(2) as proposed.

Comment: Several commenters were concerned that moving the date to June 15th will compromise the operational efficiency of issuers planning to offer QHPs in these new Exchanges. Some commenters stated that the June 15th date will give issuers insufficient time to program their systems for State-specific processes and suggested that HHS require newly-electing Exchanges to use a standard file format if the Exchange intends to collect and remit premiums. Other commenters stated that the June 15th date provides insufficient time for plan testing of State systems to ensure a smooth transition from an FFE model to a State Exchange. Other commenters stated that the June 15th date will provide the necessary time and flexibility for States transitioning to a State Exchange.

Response: The June 15th date balances the needs of issuers to prepare products for the Exchanges with the needs of the States that wish to transition to a State Exchange. The QHP certification process of newly electing State Exchanges or transitioning Exchanges should not be delayed, as State DOIs, in the ordinary course of reviewing plans for compliance with State and Federal law, will be conducting their reviews of plans irrespective of the Exchange Blueprint deadline. DOI decisions will therefore be available to inform certification decisions by a State Exchange, and there should be ample time for issuers to program their system as required by newly electing State Exchanges and as required by those FFE States transitioning to a State Exchange model. We encourage States and new State Exchanges to work with issuers on State-specific requirements and unique processes.

Comment: One commenter suggested that HHS monitor whether the 6.5 month deadline provides adequate time for HHS to assess readiness. In addition, the commenter suggested that 15 days between the Blueprint application due date of June 1st and the decision of approval or conditional approval might not allow for sufficient time for HHS to communicate with States. Finally, the commenter asked HHS to clarify when a State must have full approval as opposed to conditional approval, given the shorter timeframe. One commenter stated that the new deadline would not give HHS enough time to conduct critical IT testing for the Exchange and the health plans.

Response: HHS believes that the June 15th date provides adequate time to assess the readiness of the Exchange. As stated in the preamble, the January 1st date proved difficult for HHS to appropriately assess the readiness of State Exchanges. Fifteen days is sufficient time for communication between the States and HHS, as HHS envisions that States that are applying to become State Exchanges will be communicating with HHS well before June 1st and HHS will provide appropriate support and technical assistance. Finally, the proposed timeframe is sufficient for HHS to approve or conditionally approve the new State Exchanges.

2. Ability of States to Permit Agents and Brokers To Assist Qualified Individuals, Qualified Employers, or Qualified Employees Enrolling in QHPs

We proposed to add new § 155.220(i) to provide that paragraph (c)(3), which addresses enrollment in a QHP through the Exchange via an Internet Web site of an agent or broker, would apply to SHOPs for plan years beginning on or after January 1, 2015, in addition to the individual market Exchanges. Under the proposal, employers that have not traditionally worked with agents and brokers but have, in the past, utilized Internet Web sites of agents and brokers for purchasing insurance would have another option to learn about and participate in SHOP. We proposed to allow SHOPs, in States that allow this activity under State law, to permit enrollment in a QHP through the SHOP by using an Internet Web site of an agent or broker under the standards outlined in § 155.220(c)(3) if a State SHOP or an FF–SHOP has the technical capability to make this possible. CMS does not currently anticipate that the FF–SHOPs will make this functionality available in 2015. We are finalizing this provision as proposed, but note that we have added a title to the provision.

Comment: A broad range of commenters supported permitting enrollment in a SHOP QHP through the Exchange via the Internet Web site of an agent or broker. While several commenters favored the expanded function for agents and brokers, some commenters also recommended that HHS require compliance with industry and consumer protections. Several commenters recommended that HHS explicitly include consumer protections and prohibit agents and brokers who offer Internet Web sites to help consumers enroll in coverage through the Exchange from using PII, including gender, age, income, or other characteristics, for immediate or future marketing purposes; that the Exchange make consumers aware of these agents' and brokers' financial incentives; and that the Exchange establish a formal system for monitoring agents and brokers who offer Internet Web sites to help consumers enroll in Exchange coverage, enforcing consumer protections against such agents and brokers, and terminating relationships with agents and brokers that violate those protections.

Response: Under § 155.220(c)(3), HHS has established safeguards to protect consumers who are using the Internet Web site of an agent or broker to complete a QHP selection for coverage offered, or to enroll in coverage in the individual market Exchanges. The same safeguards and requirements would also apply when consumers use an Internet Web site of an agent or broker to complete a QHP selection for coverage offered on a SHOP Exchange.

We note that SHOP agents and brokers must comply with section 1411(g) of the Affordable Care Act, which provides that PII may only be used for purposes of, and to the extent necessary in, ensuring the efficient operation of the Exchange. States that are approved to operate SHOP Exchanges must also establish privacy and security standards governing the use of PII by non-Exchange entities consistent with § 155.260, which also prohibits any use or disclosure of PII in violation of section 1411(g) of the

Affordable Care Act.[36] We further note that FF–SHOP agents and brokers must sign an agreement with the Exchange (FF–SHOP Agent Broker Agreement) that requires strict adherence to the Exchange's privacy and security standards established pursuant to 45 CFR 155.260. SHOP agents' and brokers' use and disclosure of PII is limited to the specific authorized functions outlined in the FF–SHOP Agent Broker Agreement and that Agreement also explicitly prohibits the use of PII for any purpose that is not identified as an authorized function. The use of PII for marketing purposes is not identified as an authorized function and is therefore prohibited.

Comment: One commenter recommended that HHS require that consumers who enroll in Exchange coverage through the Internet Web site of an agent or broker complete an eligibility application and the enrollment process through the SHOP to assure the SHOP remains the eligibility and enrollment system of record. One commenter further recommended that HHS require the SHOP to transmit enrollment information to a QHP or QDP issuer to ensure an issuer can effectuate enrollment of qualified employees. Another commenter recommended that the proposed rule be expanded to explicitly require that the Exchange retain responsibility for billing and premium aggregation services as required in regulation.

Response: In accordance with CMS regulations, the SHOP, not an agent or broker, will always complete eligibility determinations and the SHOP will remain the system of record for eligibility purposes. Additionally, in accordance with CMS regulations, the SHOP, not an agent or broker, will always be responsible for premium aggregation services as set forth in § 155.705(b)(4). Under § 155.705(b)(4), for plan years beginning on or after January 1, 2015, the SHOP must be responsible for all premium aggregation services and for routing payments from employers to issuers. Specifically, the SHOP must provide each qualified employer with a bill on a monthly basis that identifies the employer contribution, the employee contribution, and the total amount that is due to issuers from the qualified employer; collect from each qualified employer the total amount due; make payments to QHP and QDP issuers in the SHOP for all enrollees; and maintain books, records, documents, and other evidence of accounting procedures and practices of the premium aggregation program for each benefit year for at least 10 years.

Comment: Several commenters recommended that agents and brokers who offer Exchange enrollment through an Internet Web site be required to list all QHP issuer offerings displayed on the relevant Exchange Web site and that the Exchange provide this information to the agent or broker. Some commenters specifically recommended that HHS specify that agents and brokers using non-Exchange Web sites must refrain from disclosing QHP prices and rates prior to the availability of such data on the SHOP Web site. Other commenters recommended that HHS contract with agents and brokers offering Exchange enrollment through an Internet Web site other than the Exchange Web site to prohibit the early release of data on QHP prices and data to ensure that QHP rates are not shared with competitors prior to the plan data being made public.

Response: As is required at § 155.220(c)(3)(iv) for agents and brokers assisting with enrollment in individual market Exchange coverage, the Internet Web site of the agent or broker used to complete the QHP selection must display all QHP data provided by the Exchange. Agents and brokers must also meet all standards for disclosure and display of QHP information contained in § 155.205(b)(1) and (c). As noted in the proposed Program Integrity Rule (78 FR 37046), we recognize that an Exchange may not be able to provide to agents and brokers certain data elements necessary to meet the § 155.205(b)(1) requirements, such as premium and rate information, depending upon confidentiality requirements, the agent or broker appointment with the QHP issuer, and State laws regarding agent and broker appointments. We therefore provided under § 155.220(c)(3)(i) that if less than all QHP data required under § 155.205(b)(1) is displayed on the agent's or broker's Internet Web site, the agent or broker must prominently display a standardized disclaimer provided by HHS stating that all information required under § 155.205(b)(1) for the QHP is available on the Exchange Web site and provide a Web link to the Exchange Web site. In addition, for States in which HHS is operating an FFM, pursuant to § 155.220(c)(3)(vii), a second disclaimer is required that would include the following notifications: (1) The Internet Web site of the agent or broker is not an FFM Web site, (2) the Internet Web site of the agent or broker may not contain all QHP data available on the FFM Web site, and (3) the agent or broker is required to comply with all applicable Federal laws, including the standards specified in paragraph (c)(3) of § 155.220, and the standards established under 45 CFR 155.260 to protect the privacy and security of PII. The disclaimer must also contain a link to HealthCare.gov. The same requirements would apply to agents and brokers assisting with enrollment in SHOP coverage.

Comment: One commenter recommended that HHS require that the Internet Web site of an agent or broker that is used to complete a QHP selection through the Exchange display available QHPs in a manner that is as consistent with the Exchange Web site as possible.

Response: Under § 155.220(c)(3)(i), all QHP data on the Internet Web site of an agent or broker that is used to complete a QHP selection through the Exchange must be disclosed and displayed consistent with the requirements that apply to the Exchange Web site at 45 CFR 155.205(b)(1) and (c). Section 155.205(b)(1) generally requires that standardized comparative information be provided for each available QHP and 45 CFR 155.205(c) requires that information be displayed in a manner that is accessible to persons with limited English proficiency and persons with disabilities. In addition, as noted above, if an agent or broker Web site does not display all information required under § 155.205(b)(1) for a QHP, it must include the standardized disclaimer established under § 155.220(c)(3)(i). The same requirements would apply to agents and brokers assisting with enrollment in SHOP coverage. State laws and regulations may establish additional standards for this activity.

3. Privacy and Security of Personally Identifiable Information

In § 155.260(a), we proposed allowing the Secretary to determine that additional uses or disclosures of personally identifiable information (PII), which may not be directly connected to Exchange "minimum functions" as currently described in regulation, ensure the efficient operation of the Exchange, subject to privacy and security standards that Exchanges must establish. We proposed a process for

[36] 45 CFR 155.105(b)(1) provides that HHS will approve the operation of an Exchange established by the State if the State Exchange is able to carry out the required functions consistent with subparts C, D, E, F, G, H, and K of part 155. For States approved to operate only a SHOP Exchange, the Exchange must perform the minimum functions described in subpart H and all applicable provisions of other subparts referenced therein. 45 CFR 155.705(a) includes a reference to subparts C, E, K, and M of part 155. The privacy and security requirements for Exchanges are codified in subpart C. As such, all Exchanges, including all SHOPs, are subject to the privacy and security requirements at 45 CFR 155.260.

Exchanges to seek the Secretary's approval of other requested uses and disclosures of eligibility and enrollment PII that would ensure the efficient operation of the Exchange; comply with other applicable law and policy; and require the consent of the individual subject of the PII prior to the requested use or disclosure.

We also proposed in § 155.260(b) to clarify that the definition of a "non-Exchange entity" refers to any individual or entity that gains access to PII submitted to an Exchange, or collects, uses, or discloses PII gathered directly from applicants, qualified individuals, or enrollees while that individual or entity is performing functions agreed to with the Exchange. Examples of non-Exchange entities include, but are not limited to, Medicaid and CHIP agencies; Certified Application Counselors; in-person assisters; agents and brokers, including Web-brokers; QHP issuers; and other third parties that contract with the Exchange or other downstream entities that contract with non-Exchange entities.

We proposed to maintain the existing requirement for Exchanges to enter into a contract or agreement with non-Exchange entities, and we specified five required elements to be included in those contracts and agreements. We proposed three criteria that would provide a foundation and flexibility for Exchanges to set privacy and security standards as a condition of contract or agreement with non-Exchange entities while also aligning closely with the wide variety of non-Exchange entities, responsibilities, functions, operational environments, and technical infrastructures. These criteria would provide equivalent or more stringent protection than the standards which the Exchange has established and implemented for itself while aligning to the functions and operating environment of the non-Exchange entity.

The proposed requirement that standards be relevant to non-Exchange entities' duties and activities in relation to the Exchange introduced the concept of "relevant and applicable" and reflected our intent to address the various responsibilities assumed by non-Exchange entities and their associated technical infrastructures. We are finalizing the provisions as proposed.

Comment: Commenters generally expressed support for the proposed substantive and procedural requirements established in § 155.260(a)(1)(iii), including a consent requirement, for data uses and disclosures not explicitly described in § 155.260(a)(1)(i) or (ii). Certain commenters noted that data required to determine eligibility and premium subsidies is extremely sensitive, necessitating strong privacy and security safeguards. Certain commenters emphasized the need to minimize sharing of PII to the minimum necessary to effectuate implementation of the Affordable Care Act and ensure the efficient operation of the Exchange.

Response: We concur with the commenters' suggestion that the sensitive nature of PII necessitates robust privacy and security safeguards, and we reiterate that the Secretary would review requestors' proposed privacy and security standards as part of the Secretary's proposed review process under § 155.260(a)(1)(iii)(B)(4). The proposed process establishes the requirement for requestors to describe how data will be protected with privacy and security standards that are compliant with § 155.260 and to show that a proposed use or disclosure will ensure the efficient operation of the Exchange consistent with section 1411(g)(2)(A) of the Affordable Care Act. If a requested use or disclosure does not satisfy these requirements, it would not be approved under the proposed process. We further recognize the imperative to maintain safeguards for eligibility and enrollment PII. Once the Secretary approves a proposed use or disclosure of eligibility and enrollment PII, the Exchange would be required to limit the use or disclosure of PII to the extent necessary to accomplish the proposed function, and the individual would need to provide consent before his or her eligibility and enrollment PII could be used or disclosed.

Comment: Some commenters supported our proposal at § 155.260(b)(3), which would require that non-Exchange entities meet privacy and security standards at least as protective as the standards the Exchange establishes and implements for itself. The commenters further recommended that the same standards apply to downstream entities to ensure PII continues to be protected once it reaches the downstream entity. One commenter further recommended that Exchanges form direct agreements with downstream entities rather than relying on non-Exchange entities to ensure their compliance with privacy and security standards. The commenter stressed that this is important because downstream entities may have different duties or operational and technical environments than the non-Exchange entities with which an Exchange has an agreement, and these differences may not be properly accounted for in the Exchange's agreement with a non-Exchange entity.

Response: We proposed at § 155.260(b)(2) to maintain the existing requirement for Exchanges to enter into a contract or agreement with non-Exchange entities and we provided more details specifying the required elements of these contracts and agreements. We proposed in § 155.260(b)(2)(iv) that such a contract or agreement must require any downstream entities that meet the definition established in § 155.260(b)(1) to comply with the same privacy and security standards with which the non-Exchange entity agrees to comply under its contract or agreement with the Exchange. Further, we proposed in § 155.260(b)(3)(iii)(A) that the privacy and security standards to which non-Exchange entities are bound must consider the operational and technical environment in which the non-Exchange entity operates, and that these environments be assessed in light of the requirement in § 155.260(a)(5) to monitor, periodically assess and update security controls and related system risks to ensure continued effectiveness of those controls. Downstream entities are also subject to this criterion under proposed § 155.260(b)(2)(iv). Our adoption of these requirements in the final rule reflects our concurrence that it is important that the privacy and security standards continue to apply to PII as it moves to additional downstream entities.

Comment: Several commenters suggested that QHP issuers should not be considered non-Exchange entities under the definition proposed in § 155.260(b) because issuers' roles differ fundamentally from the roles and functions of other entities listed as non-Exchange entities in the proposed regulation. Certain commenters specified, as an example, that unlike other entities listed as non-Exchange entities, QHP issuers do not participate in the eligibility determination process because it is conducted entirely through the Exchange.

Response: Because the proposed definition of non-Exchange entities is broad and includes a variety of entities, we recognize that there can be considerable variation among non-Exchange entities. Different non-Exchange entity functions can result in variation in both the amount and type of access to PII and the technical characteristics of the non-Exchange entity's environment. We intended to address the lack of a regulatory mechanism to take these variations into account, and to alleviate potential

operational burdens for non-Exchange entities. We proposed that any individual or entity that gains access to PII submitted to an Exchange or accesses PII directly from individuals should be considered a non-Exchange entity. This approach defines a non-Exchange entity based on the entity's access to PII, not based on the roles or functions of the entity, and QHP issuers would qualify as non-Exchange entities based on this definition. We believe this approach appropriately addresses the fact that a QHP issuer's role may differ from that of other non-Exchange entities.

Comment: Several commenters suggested that QHP issuers should not be subject to the proposed regulatory requirements at § 155.260(b)(2) because they already are subject to the HIPAA Privacy, Security and Breach Notification Rules at 45 CFR Parts 160 and 164, as well as applicable State breach notification standards. Certain commenters requested that if issuers are classified as non-Exchange entities as proposed, we recognize the HIPAA Privacy, Security and Breach Notification Rules as sufficient for Exchange privacy and security standards under § 155.260(b). Certain commenters further explained that, because QHP issuers and their delegated and downstream entities already are subject to comprehensive privacy and security standards under HIPAA, requiring issuers to implement additional privacy and security standards would pose duplicative and potentially conflicting requirements and unnecessary administrative burdens. Certain commenters suggested that the proposed regulatory requirements for non-Exchange entities should not apply to QHP issuers because they already are subject to business associate agreement requirements that the proposed regulatory requirements would duplicate, imposing unnecessary administrative burdens on them.

Response: In its final form, § 155.260(b)(3)(i)–(iii) will allow an Exchange the flexibility to tailor privacy and security standards to particular types of non-Exchange entities so long as those standards remain strong in compliance with § 155.260. With respect to non-Exchange entities that currently are obligated to follow the HIPAA Privacy, Security and Breach Notification Rules, pursuant to written agreements required by § 155.260(b)(3), Exchanges will have the flexibility to deem non-Exchange entities in compliance with the specific privacy and security standards that the Exchange establishes for its non-Exchange entities by virtue of their compliance with the HIPAA Privacy, Security and Breach Notification Rules or similar standards. This would be permissible so long as the Exchange determines that HIPAA Privacy, Security and Breach Notification Rules or similar standards are at least as protective as the standards the Exchange has established and implemented for itself in compliance with paragraph § 155.260(a)(3), so long as those standards' protections are extended to all PII created, collected, disclosed, accessed, maintained, stored, or used in connection with FFEs, and so long as the Exchange also requires non-Exchange entities to comply with the additional limitations on use and disclosure of PII in section 1411(g) of the Affordable Care Act. It would be incumbent upon the Exchange to evaluate whether such deeming arrangements would satisfy all of the criteria established for privacy and security standards under proposed § 155.260(b)(3). With respect to FFEs, pursuant to written agreements, they also will have the flexibility to deem QHP issuers, and agents and brokers who use QHP issuer information technology systems, to be in compliance with the specific privacy and security standards that the Exchange establishes for its non-Exchange entities by virtue of their compliance with the HIPAA Privacy, Security and Breach Notification Rules or similar standards, so long as the FFEs determine that those standards are at least as protective as the standards the FFEs have established and implemented for themselves in compliance with paragraph § 155.260(a)(3), so long as those standards' protections are extended to all PII created, collected, disclosed, accessed, maintained, stored, or used in connection with FFEs, and so long as the FFEs also require non-Exchange entities to comply with the additional limitations on use and disclosure of PII in section 1411(g) of the Affordable Care Act. We intend to issue guidance that will address in greater detail the applicability of the HIPAA Privacy, Security, and Breach Notification Rules and the additional limitations on use and disclosure of PII in section 1411(g) of the Affordable Care Act.

Comment: Certain commenters more specifically requested that QHP issuers be allowed to comply with the HIPAA Privacy, Security and Breach Notification Rules to satisfy the privacy and security requirements of § 155.260(b) because the enrollment and eligibility PII that QHP issuers receive from an Exchange does not merit a different level of protection than other non-Exchange-based enrollment information that QHP issuers typically handle. Certain commenters explained that QHP issuers do not participate in the Exchange eligibility determination process, and only receive the results of such determinations in enrollment files that are substantially similar to the enrollment data that health plans and issuers receive or create for non-Exchange-based products that are subject to HIPAA Privacy and Security Rules and State breach notification standards. One commenter also noted that such enrollment files do not contain information from Federal agencies such as IRS and Department of Homeland Security.

Response: Under the final rule, Exchanges will have the flexibility to deem non-Exchange entities in compliance with the specific privacy and security standards that the Exchange establishes for its non-Exchange entities by virtue of their compliance with the HIPAA Privacy, Security and Breach Notification Rules or similar standards, so long as those standards are at least as protective as the standards the Exchange has established and implemented for itself in compliance with paragraph § 155.260(a)(3), and so long as they incorporate the additional limitations on use and disclosure of PII in section 1411(g) of the Affordable Care Act. It would be the responsibility of the Exchange to evaluate whether such deeming arrangements for privacy and security standards for non-Exchange entities would satisfy the criteria proposed in § 155.260(b)(3).

We proposed requirements in § 155.260(b)(3) that are intended to provide a foundation that Exchanges must use to define privacy and security standards for non-Exchange entities that afford a level of protection equal to that provided by the standards the Exchanges adopt for themselves. We proposed three criteria that would have to be met by the privacy and security standards to which an Exchange must bind non-Exchange entities, and we do require that these standards take into specific account the environment in which the non-Exchange entity operates. The first criterion in § 155.260(b)(3)(i) requires that any privacy and security standards must be as protective as the standards the Exchange sets for itself, consistent with all the principles and requirements listed under § 155.260(a). The second criterion requires that any privacy and security standards must also comply with requirements for workforce and contractor compliance, written policies and procedures, compliance with the

Code, and consequences of improper use and disclosure of information established by § 155.260(c), (d), (f) and (g). The third criterion requires that the privacy and security standards to which non-Exchange entities are bound take into consideration several factors, including the operating and technical environment in which the non-Exchange entity operates. These environments and the standards themselves should be assessed in light of the requirement established at § 155.260(a)(5) to monitor, periodically assess, and update security controls and related system risks to ensure the continued effectiveness of those controls. We would expect that an Exchange's contracts and agreements with non-Exchange entities would include privacy and security standards based on these criteria, as well as a proposed requirement at § 155.260(b)(3)(iii)(B) requiring those standards to be relevant and applicable to the non-Exchange entity's duties and activities in relation to the Exchange. We believe these rules allow sufficient flexibility for Exchanges to tailor privacy and security standards to the specific information non-Exchange entities will handle, including that information typically handled by QHP issuers.

Comment: Some commenters expressed concern that under the proposed regulatory language, an Exchange could require a QHP issuer to comply with CMS's "Minimum Acceptable Risk Standard for Exchanges (MARS–E) Suite of Documents: Guidance on Operational, Technical, Administrative, and Physical Safeguards." [37] One commenter further explained that because QHP issuers do not conduct eligibility analyses, only receiving eligibility results, requiring issuer compliance with the full suite of MARS–E requirements would have significant operational impacts and increase administrative costs without enhancing data security.

Response: Under the final rule, where an Exchange determines that a non-Exchange entity's compliance with MARS–E requirements are necessary to adequately protect PII and comply with § 155.260(b), it may indeed require such compliance under a written agreement with a non-Exchange entity. For example, FFE agreements with agents and brokers who will assist consumers with applications for determinations of eligibility to enroll in insurance affordability programs, including QHPs, and/or to receive advance payments of premium tax credit and/or cost-sharing reductions using the FFE Web site, currently require compliance with MARS–E requirements. All agents and brokers providing such assistance through FFEs must comply with the FFE privacy and security standards for non-Exchange entities as a condition of their separate agreements with CMS. Agents and brokers who will use a QHP issuer's computers and work space controlled by a QHP issuer to perform these functions, must ensure those computers and work space are compliant with privacy and security provisions of their agreements with CMS. We believe that QHP issuers typically have procedures already in place to address general computer and work space security.

Comment: One commenter recommended that we clarify that limitations on use and disclosure under section 1411(g) of the Affordable Care Act apply only to PII concerning an "applicant." The commenter further explained that, once an individual is enrolled in a QHP, PII received during the application process should no longer be subject to section 1411(g), but instead should be subject to HIPAA privacy and security standards. The commenter also requested that if an applicant provides information to a QHP issuer, governed by section 1411(g) of the Affordable Care Act, and the applicant does not enroll in a QHP, the issuer should then be able to use and disclose the information consistent with HIPAA privacy and security standards after obtaining the applicant's consent.

Response: We clarify that as proposed in § 155.260(b)(1), any individual or entity that gains access to PII submitted to an Exchange or collects, uses or discloses PII gathered directly from applicants, qualified individuals, or enrollees while that individual or entity is performing the functions agreed to with the Exchange, is considered to be a non-Exchange entity. We proposed in § 155.260(b)(2) to maintain the existing requirement for Exchanges to enter into a contract or agreement with non-Exchange entities. We also state in § 155.260(b)(2)(ii) that in the required contract or agreement, the Exchange must impose a requirement for compliance with privacy and security standards, and specifically list or incorporate by reference the privacy and security standards and obligations with which the non-Exchange entity must comply, including obtaining consent consistent with the principle provided under § 155.260(a)(iv). Under the Final Rule, Exchanges will have the flexibility to deem non-Exchange entities in compliance with the specific privacy and security standards that an Exchange establishes for its non-Exchange entities by virtue of their compliance with the HIPAA Privacy, Security and Breach Notification Rules or similar standards, so long as the Exchange determines that those standards are at least as protective as the standards the Exchange has established and implemented for itself in compliance with paragraph § 155.260(a)(3), so long as those standards' protections are extended to all PII created, collected, disclosed, accessed, maintained, stored, or used in connection with Exchange, and so long as the Exchange also requires non-Exchange entities to comply with the additional limitations on use and disclosure of PII in section 1411(g) of the Affordable Care Act.

Comment: One commenter expressed concern regarding the proposed requirement that non-Exchange entities inform the Exchange of any change in administrative, technical or operational environments defined as material in the contract. The commenter expressed concern that the definition of material changes that would trigger the reporting requirement could be overly broad in individual Exchange contracts. The commenter recommended that we clarify that the types of changes that would have to be reported be significant and have the possibility of altering the organization's overall security posture.

Response: At § 155.260(b)(2), we proposed to maintain the existing requirement for Exchanges to enter into a contract or agreement with non-Exchange entities, and we proposed five required elements of these contracts and agreements. One of those elements, in § 155.260(b)(2)(iv), would require the non-Exchange entity to inform the Exchange of any change in its administrative, technical or operational environment, as defined within the contract, which would require an alteration of the privacy and security standards within the contract or agreement to ensure those standards remain relevant and aligned with current operating environments. The intent of this requirement is to provide an opportunity for the Exchange and the non-Exchange entity to assess and revise the privacy and security standards to ensure their continued relevance.

4. Annual Open Enrollment Period for 2015

In § 155.410, as finalized in the Exchange Establishment Rule, we set forth provisions for initial and annual open enrollment periods. We proposed amending § 155.410(e) and (f), which pertain to the annual open enrollment

[37] The MARS–E suite of documents can be found at the following address: *http://www.cms.gov/cciio/resources/regulations-and-guidance/index.html#MinimumAcceptableRiskStandards.*

period and effective date for coverage after the annual open enrollment period. These amendments apply to non-grandfathered policies offered through and outside the Exchange.

In paragraph (e), we proposed adding a paragraph that would change the annual open enrollment period for the 2015 benefit year. We proposed that for all Exchanges, annual open enrollment would begin on November 15, 2014 and extend through January 15, 2015. This would give health insurance issuers an additional month in 2014 before they would need to begin accepting plan selections for the upcoming plan year and staggers the start of open enrollment for the Exchange from that for Medicare Advantage. It would give consumers the ability to have coverage starting January 1, 2015, or if they need more time, until January 15, 2015 to shop for, and select a QHP for the 2015 plan year. We also noted that if finalized, all Exchanges would be expected to delay their QHP certification dates by at least one month. This would give health insurance issuers additional time to monitor 2014 enrollments, prior to submitting their 2015 rates. We proposed to retain the October 15th to December 7th open enrollment period for subsequent benefit years.

In paragraph (f), we proposed adding a paragraph to address coverage effective dates for plan selections made during the annual open enrollment period for the 2015 benefit year. We proposed that coverage must be effective January 1, 2015, for plan selections received by the Exchange on or before December 15, 2014. We proposed that coverage must be effective February 1, 2015, for plan selections received by the Exchange from December 16, 2014 [38] through January 15, 2015. In accordance with § 155.335(j), qualified individuals already enrolled in a QHP through the Exchange in 2014 who remain eligible for enrollment in a QHP would have their coverage continue into 2015, but they would have the ability to change QHPs until January 15, 2015. We also sought comment on whether there should be retrospective coverage to January 1, 2015, for any individual who signs up after December 15, 2014 in the open enrollment period to ensure continuity of coverage. We also proposed January 1st coverage effective dates for open enrollment for benefit years beginning on or after January 1, 2016.

[38] We note that the proposed rule contained a typographical error that referred to December 16, 2015, instead of the clearly intended December 16, 2014. This final rule finalizes the provision with the corrected date.

We are finalizing the regulation with an open enrollment end date of February 15, 2015 instead of January 15, 2015, for the benefit year beginning January 1, 2015, and we are adding coverage effective dates for enrollments during the period between January 16–February 15, 2015. We are not finalizing in this rule, the open enrollment period or effective dates for the benefit years beginning on or after January 1, 2016. Finally, for consistency within this section, we are changing the reference to "plans" in subparagraph (f)(1) to "QHPs."

Comment: Many commenters supported the proposed open enrollment period dates and corresponding coverage effective dates. Some commenters proposed alternate open enrollment period date ranges for both the benefit year beginning on January 1, 2015, and for years beyond 2015. Other commenters opposed the proposed amendments to the rule. Issuers discouraged retroactive effective dates, in response to a solicitation for comments regarding retroactive effective dates.

Response: In response to comments recommending different ranges for the annual open enrollment period, we are finalizing this amendment so that open enrollment for the benefit year beginning January 1, 2015 begins November 15, 2014, and ends February 15, 2015. We are also adding a provision providing for the standard coverage effective date of March 1, 2015 for enrollments taking place between January 16 and 31, 2015. We believe that the additional time before open enrollment will enable the collection of additional rating experience that could have a positive benefit on reducing 2015 rates for consumers. We further believe that extending the open enrollment period to February 15, 2015 instead of January 15, 2015 is beneficial for consumers because it provides additional time to select a plan. We are not adding any requirements for retroactive coverage in connection with this annual open enrollment period. Because some commenters proposed alternate open enrollment period date ranges for benefit years beyond the one year beginning on January 1, 2015, we intend to propose open enrollment dates for the 2016 plan year in the 2016 draft Payment Notice. Finalizing open enrollment dates for the 2016 plan year in the 2016 Payment Notice will allow an additional year's experiences to inform the finalization of realistic enrollment dates.

We note that non-grandfathered individual coverage sold on a date other than January 1st of the calendar year would still be required to have the plan or policy year end on December 31, 2015 to comply with the requirement to be offered on a calendar policy year under 45 CFR 144.103 and 147.104(b)(2). We also note that this amendment to the open enrollment period applies to the individual health insurance market, both for plans offered through and outside the Exchanges, by virtue of the cross-reference at 45 CFR 147.104(b)(1)(ii), through which the dates of the individual market Exchange open enrollment period also apply to the individual market generally.

5. Functions of a SHOP

We proposed amending § 155.705(b)(1), which lists the rules regarding eligibility and enrollment to which SHOPs must adhere, to include mention of provisions regarding termination of coverage in the SHOPs and SHOP employer and employee eligibility appeals that were finalized in the first final Program Integrity Rule. We are finalizing this amendment with a minor change to replace the list of provisions in the current and proposed versions of the rule with a more general reference to subpart H. The change from the proposed rule text will help HHS keep the provision up to date.

We also proposed adding a new paragraph § 155.705(b)(3) to provide qualified employers with options to offer dental coverage after employee choice becomes available in the FF–SHOPs. We proposed that for plan years beginning on or after January 1, 2015, a FF–SHOP would have two methods by which to offer stand-alone dental plans (SADPs) to its employees and their dependents—either a single SADP or a choice of all SADPs available in an FF–SHOP after employee choice becomes available in the FF–SHOPs. We also noted in the preamble to the proposed 2015 Payment Notice that we were considering allowing qualified employers to offer all SADPs at a given dental AV level option, if the SADP AV level requirements were not eliminated in this rulemaking, and sought comments on this approach. Because we are now not finalizing the elimination of the SADP AV requirements, we are finalizing the policy to reflect this contemplated approach, giving employers the option of offering employees either a single qualified dental plan, or all dental plans at a single dental actuarial value level.

We proposed to re-designate § 155.705(b)(4)(ii) as (b)(4)(iii) and to add new paragraph (b)(4)(ii) to allow all SHOPs to establish one or more standard processes for premium calculation, payment, and collection

after the SHOP makes premium aggregation available. We also proposed provisions related to the processes FF–SHOPs would establish for premium calculation, payment, and collection under proposed § 155.705(b)(4)(ii). Consistent with § 155.720(b), which establishes that all SHOPs must establish a uniform enrollment timeline and process, including a specified list of activities such as establishment of effective dates of employee coverage, for all QHP issuers and qualified employers to follow, and consistent with § 155.720(d), which establishes that all SHOPs must follow the requirements set forth at § 155.705(b)(4), we proposed at § 155.705(b)(4)(ii)(A) that, after premium aggregation becomes available in the FF–SHOPs, employers in the FF–SHOPs would be required to make all premium payments—initial and subsequent—according to a timeline and process that HHS will establish through guidance. We anticipate that this payment timeline would require employers to make a full initial premium payment at least 2 days prior to the employer's desired coverage effectuation date, or perhaps longer, in order to provide a reasonable window of time for the relevant banks to process the payment transaction.

We solicited comments about whether this time frame would be reasonable for employers or issuers, about alternative time frames that might be more appropriate, and about the payment timeline and process for the FF–SHOPs generally, including the consideration that HHS should factor into the development of the payment timeline and process. In developing the premium payment timeline and process, HHS will consider its interest in operating and administering the FF–SHOPs efficiently, as well as issuers' interests in ensuring timely payment of premiums, and issuers' and employers' interests in establishing a fair and workable premium payment process. Section 155.735(c) and the Draft 2015 Letter to Issuers in the Federally-facilitated Marketplaces published on February 4, 2014 contain additional information about the payment timeline and process for payments subsequent to the initial premium payment. Finally, as discussed below in the preamble to § 156.285, we also proposed a conforming amendment to § 156.285(c)(7)(iii) to establish that an FF–SHOP issuer would be required to effectuate coverage unless it has received an enrollment cancellation from the FF–SHOP. We are finalizing these provisions as proposed.

At § 155.705(b)(4)(ii)(B), we proposed a methodology for prorating premiums in FF–SHOPs after premium aggregation becomes available in those SHOPs in plan years beginning on or after January 1, 2015. We proposed that groups will be charged for the portion of the month for which the enrollee is enrolled. In the FF–SHOPs, premiums for coverage of less than 1 month will be prorated by multiplying the number of days of coverage in the partial month by the premium for 1 month divided by the number or days in the month. Issuers will charge and the FF–SHOP will collect for only the portion of coverage provided for the partial month. We also solicited comments about whether a standardized methodology regarding prorating premiums for partial month enrollment should be adopted across all individual market Exchanges. We are finalizing this provision as proposed, without adopting a standardized methodology across all individual market Exchanges.

We are finalizing in this rule amendments to § 155.705(b)(6) that were proposed in the "Program Integrity Rule" published in the June 19, 2013 **Federal Register** (78 FR 37032) on pages 37051–37052 and 37084. These amendments were proposed in conjunction with the issuer standards regarding the frequency of indexed rate updates that were codified at 45 CFR 156.80, and make explicit that this market-wide policy also applies to SHOPs. Because § 156.80 sets a market standard for mid-year rate updates of no sooner than quarterly, this provision is already in effect small-group-market-wide, including in all SHOPs. Specifically, we proposed to amend paragraph (b)(6)(i) to provide that SHOPs must require QHP issuers to make changes to rates at a uniform time that is no more frequently than quarterly. We also proposed at paragraph (b)(6)(ii) to provide issuers participating in the FF–SHOPs with the maximum amount of flexibility permitted under § 156.80 and the proposed amendment to § 155.705(b)(6)(i), standardize the effective dates for rate updates in the FF–SHOPs, and provide that FF–SHOP issuers must submit rates to HHS 60 days in advance of the effective date. Consistent with technical guidance provided to issuers through the Health Insurance Oversight System on April 8, 2013, issuers will be able to submit updated quarterly rates for the FF–SHOPs no sooner than for the third quarter of 2014, due to current system limitations.[39] Comments related to this provision were addressed when the single risk pool provision was finalized on October 30, 2013 in the Program Integrity final rule. We are finalizing as proposed the amendment to § 155.705(b)(6)(i), but are finalizing the language proposed at § 155.705(b)(6)(ii) at § 155.705(b)(6)(i)(A) instead of at (b)(6)(ii), to make clear that we never intended for this proposal to supersede the language at current § 155.705(b)(6)(ii). We are also making a minor change in the language finalized at § 155.705(b)(6)(i)(A) to replace the word FF–SHOP with the term "Federally-facilitated SHOP."

We proposed at § 155.705(b)(11)(ii)(C) to provide FF–SHOPs, in plan years beginning on or after January 1, 2015, with the option of permitting a qualified employer to define a percentage contribution for full-time employees (as defined in § 155.20 and section 4980H(c)(4) of the Code) that differs from the percentage contribution the qualified employer defines for employees that are not full-time employees under that definition, to the extent permitted by applicable law. This proposal would also allow an FF–SHOP to permit an employer to define different percentage contributions toward premiums for dependent coverage for full-time and non-full-time employees. The FF–SHOPs would be allowed to define up to four different contribution levels: full-time employee-only, full-time employee dependent, non-full-time employee-only and non-full-time employee dependent. We are finalizing the substance of this provision as proposed, but we anticipate that the functionality to implement different contribution levels for full-time versus non-full-time employees and their dependents will not be available in the FF–SHOPs until sometime after January 1, 2015. We will provide adequate notice to issuers and employers before this functionality becomes available.

We also proposed a prohibition on composite premiums in the FF–SHOPs for plan years beginning on or after January 1, 2015, when a qualified employer elects to offer employee choice—that is, when the qualified employer offers its qualified employees all QHPs within the employer's selected level of coverage under § 155.705(b)(3)(iv)(A). To accomplish this objective, we proposed amendments to §§ 155.705(b)(11)(ii)(D) and 156.285(a)(4). While we are finalizing the proposed amendments to § 156.285(a)(4), as discussed below, we are *not* finalizing the proposed amendments to § 155.705(b)(11)(ii)(D), because those amendments would not carry out the intended policy, but would

[39] See Rates Changes for Small Group Market Plans and System Processing of Rates (April 8, 2013).

instead limit employers' ability to establish a fixed contribution to employee coverage, which was not an intended outcome of the proposals. We clarify that we have always interpreted § 155.705(b)(11)(ii)(D) to provide that, in an FF–SHOP, a State or employer may require that employer contributions be based on a calculated composite premium, which is, in effect, a composite premium calculated for the sole purpose of establishing a fixed dollar amount employer contribution to employee coverage, and is not a composite premium offered to the group plan by the issuer. When employer contributions are based on a calculated composite premium, this has the effect of equalizing employer contributions for a given plan such that the employer's contribution toward each enrollee's premium does not vary by the enrollee's age, but is instead a fixed dollar amount. In other words, the calculated composite premium described in § 155.705(b)(11)(ii)(D) is a separate concept from the composite premium addressed in § 147.102 and in our proposed amendments to § 156.285(a)(4). Accordingly, the fact that the FF–SHOPs will permit employers to use a calculated composite premium to determine employer contributions does not require issuers that are not otherwise required to offer composite premium rates to do so. Employers may also opt to set their contributions as a percentage of per-member premiums under a calculated composite premium approach or under a per-member premium approach. For these reasons, no modification to § 155.705(b)(11)(ii)(D) is necessary to carry out our intended policy on composite premiums in the FF–SHOPs. We are addressing comments on the proposed policy below, in the preamble section discussion related to final § 156.285(a)(4).

We also asked for comments on whether the calculation of user fees for the FF–SHOPs should be calculated based upon composite premiums or premiums calculated on per-member buildup. The methodology to calculate user fees for the FF–SHOPs will depend on how the group calculates a group's monthly premium. If a group uses a composite premium, the user fee will be based on this methodology. Similarly, if a group uses a per-member buildup approach, the user fee will reflect this methodology.

Comment: We received varying comments on our proposal to allow employers the ability to offer employees a choice of all SADPs available in an FF–SHOP. Several commenters supported our proposal of offering full choice among all of the SADPs available in an FF–SHOP, and stated that the proposal would allow employees to choose a dental benefit that works best for their family and will lead to an increase in choice and competition in the small group market. Commenters supportive of the proposal also stated that allowing employers the flexibility to select whether to make available a single SADP or to make available all SADPs will encourage employer participation in the Exchanges. However, some commenters were opposed to allowing employee choice of SADPs, specifically requesting that this feature should be revisited in future plan years. Commenters opposed to the proposal stated that this additional choice will provide an additional layer of complexity for both the FF–SHOP Web site and administrative functionality. Some commenters said that it will also increase the risk of adverse selection, negatively affect competition, and increase prices for consumers.

Response: Allowing an employer flexibility to provide its employees and their dependents with a range of stand-alone dental coverage options advances our goal of increased choice and competition in FF–SHOPs. Allowing the option for qualified employers to offer all SADPs at a given dental AV level option (high and low) is similar to employee choice of QHPs in SHOPs, because under employee choice, an employer selects an actuarial value level (or "metal tier") of coverage and employees may select any QHP within that actuarial value level. Accordingly, as discussed in the preamble to the proposed rule, we considered whether to give employers the option of offering one SADP or all SADPs at one of the actuarial value levels set forth at § 156.150, but we did not ultimately propose regulation text reflecting that approach. Instead, we proposed providing employers with the option of offering all SADPs in an FF–SHOP, because another proposed amendment in this rulemaking would have done away with the actuarial value levels for SADPs set forth at § 156.150. Because that proposed amendment to § 156.150 will not be finalized, we can now amend our proposed regulation text to implement this alternative option. This modification would also address some commenters' concerns about too much risk when all SADPs are made available to employees in FF–SHOPs.

Comment: We received some comments stating that issuers should be allowed to price for the employer choice and employee choice for SADPs separately; that is, that issuers should be permitted to charge a different premium to the employer based on whether the SADP is the only one offered or on whether the SADP is one among many plans being offered. Commenters stated that not allowing issuers to price separately for employer choice and employee choice will adversely affect competition and increase prices for consumers.

Response: 45 CFR 156.255(b) requires that, in order for a plan to be certified as a QHP, the plan's issuer "must charge the same premium rate without regard to whether the plan is offered through an Exchange . . . ." This requirement applies to SADP QHPs under § 155.1065(a)(3). If a SADP QHP is priced differently based on whether it is being offered as the only SADP QHP or as one of several SADP QHPs under employee choice that would mean that the SADP QHP would have two different premium rates when offered through the Exchange. This necessarily means that one of these premium rates would be different from the premium rate of the same SADP QHP offered outside the Exchange, resulting in a different premium rate specifically with regard to whether the plan is offered through an Exchange. Therefore, the same SADP QHP cannot be offered at two different premium rates through the Exchange and continue to meet the certification requirement at § 156.255(b). Accordingly, we are not modifying the rule in response to this comment.

Comment: We received some suggestions that HHS require group minimum participation rates for SADPs.

Response: HHS interprets § 155.705(b)(10)(i) and (ii), the minimum participation requirement in the FF–SHOPs, to apply only to comprehensive medical QHPs offered through the FF–SHOPs. HHS did not intend for the FF–SHOP minimum participation requirements to apply to stand-alone dental coverage. Many of the adverse risk selection concerns that exist for medical plans do not apply to SADPs because SADPs, which are typically excepted benefits, are not subject to many of the market reforms applicable to other QHPs, and can therefore address adverse selection with more flexibility, through different premium rating and benefit design methodologies.

Comment: Some commenters supported our proposal to provide options for dental coverage in the FF–SHOPs. However, they believe that an additional option should be taken into consideration which includes allowing employers to offer all SADPs but at a given AV level.

Response: Because we are not removing the AV standards for SADPs as was initially proposed in this rulemaking, we are modifying our proposal to allow employers the option to offer either a single QDP, or all dental plans at a single dental actuarial value level of coverage.

Comment: Several commenters support allowing a SHOP to establish standard processes for premium calculation, premium payment, and premium collection. Further, several commenters believe it should be a requirement of all SHOP Exchanges both FF–SHOPs and State-based SHOPs. Some commenters also stated that the SHOP should involve issuers in the development of the process and that HHS should release a proposed version that is open for comment before it is finalized. Commenters further stated that HHS should build on existing industry models. One commenter also suggested ensuring that timelines are feasible such that employers and employees are not told that coverage will be effectuated on a given date, only to find that processes broke down and coverage was not effectuated due to insufficient processing time.

Response: HHS will provide a premium payment process that is efficient and workable and may, in the future, establish through rulemaking a standard process for all SHOP Exchanges. We will continue to work with issuers and other stakeholders to further refine the timeline and process for premium payments.

Comment: We received several comments on standardizing the pro-rating methodology in FF–SHOPs. Many commenters recognize the need to standardize pro-ration of premiums in an employee choice environment when the FF–SHOP is responsible for billing and payment remittance to multiple issuers for a single group and several commenters supported our proposed methodology of pro-rating premiums. One commenter specifically stated that this policy should only be used for initial enrollment due to birth or adoption and termination and not applied on an ongoing basis. However, some commenters opposed our proposal and suggested we adopt current industry practice of using a mid-month "wash" approach where we would charge for the entire month when the coverage effective date is before the 15th of the month and do not charge for an employee or dependent plan taking effect after the 15th of the month.

Response: FF–SHOPs will be responsible for collecting all premiums from participating qualified employers starting in 2015. It is impractical for the FF–SHOPs to accommodate the existing variation in pro-rated premium methodologies that exist across States and issuers. We believe our approach is fair for all issuers as they will receive the amount owed them based on the number of days an enrollee is covered. We are finalizing the proposed provision with no changes such that groups would be charged for the portion of the month for which the subscriber is enrolled.

Comment: One commenter supported the approach to adopt a standardized methodology regarding prorating premiums for partial month enrollment across all individual market Exchanges and several commenters expressed concern or sought clarification about such an approach. One commenter believed that setting a standardized methodology was unnecessary because individual market Exchanges do not perform premium aggregation. Another commenter opposed the approach, noting that the commenter believed that it would create gaps in coverage, disruption in other standard enrollment and billing processes designed to operate on a monthly basis, and not align with the U.S. Department of the Treasury regulation concerning the treatment of partial month enrollment for the purpose of minimum essential coverage.

Response: In future rulemaking, we intend to propose that an individual market Exchange may establish one or more standard processes for premium calculation, and that the FFE will establish one consistent with the methodology finalized at § 155.705(b)(4)(ii)(B) of this final rule for the FF–SHOPs. By taking this approach, we would eliminate issues where consumers who transition to Medicaid are charged premiums for days on which they are enrolled in Medicaid, which is effective no earlier than the date of application. It would also be consistent with proposed 26 CFR 1.36B–3(d)(2)[40] which specifies that when coverage is terminated before the last day of the month, and the issuer reduces or refunds a portion of the monthly premium, the premium tax credit is adjusted using the same methodology described in this final rule for the FF–SHOPs.

Comment: We received several comments on our proposal to give the FF–SHOPs the authority to permit qualified employers to contribute differently to the premiums of full-time and part-time employees. Some commenters supported our proposal though suggested we let employers determine how many hours constitute a full-time employee. Some commenters opposed our proposal because it would be too complicated to implement. They suggested that the FF–SHOP ask an employer to calculate the percentage or dollar amount of contributions instead of defining a standard contribution level. Other commenters suggested we delay implementing this SHOP feature until after the online portal and premium aggregation services are fully functional. One commenter specifically recommends HHS work with issuers and the premium aggregator to ensure that the FF–SHOP is fully capable of supporting this function.

Response: To ensure we have fully tested this contribution methodology, while we are finalizing the proposed provision giving the FF–SHOPs the option to permit qualified employers to contribute differently in the premiums of full-time and part-time employees, we will not be offering employers this option until sometime after January 1, 2015. We will provide issuers and employers adequate notice before this option becomes available. We further note that it would not be consistent with the definition of a "full-time employee" at 45 CFR 155.20 for the FF–SHOPs to permit employers to determine how many hours constitute a full-time employee.

Comment: Some commenters expressed their preference that FF–SHOP user fees should be based on per-member buildup—even when employers offering a single plan are charged composite premiums pursuant to § 147.102.

Response: The FFE user fee is calculated by multiplying the user fee rate by the premium charged by the issuer for each policy under the plan where enrollment is through a FFE. For issuers participating in an FF–SHOP, the user fee rate is multiplied by the premium calculated under the methodology used to calculate a group's monthly premium. For example, if a group is using a composite premium, the user fee will be based on the composite premium. If a group uses a per-member buildup approach, the user fee will reflect this methodology.

6. Eligibility Determination Process for SHOP

We proposed to amend paragraph § 155.715(c)(4) to replace a reference to sections 1411(b)(2) and (c) of the Affordable Care Act with a reference to Subpart D of 45 CFR part 155, and to add a reference to eligibility

[40] Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit Proposed Rule published in the May 3, 2013 **Federal Register** (78 FR 25915).

verifications as well as to eligibility determinations. The proposed changes would make explicit our interpretation of our current regulations, under which a SHOP is prohibited from performing any individual market eligibility determinations or verifications as described in Subpart D, which, for example, includes making eligibility determinations for advance payments of the premium tax credit and cost sharing reductions in the individual market Exchange. We are finalizing this provision as proposed.

We also proposed amending § 155.715(d) to address when SHOP eligibility adjustment periods would be triggered. We proposed providing eligibility adjustment periods for both employers and employees only when there is an inconsistency between information provided by an applicant and information collected through optional verification methods under § 155.715(c)(2). The proposal would eliminate the potential for unnecessary delay created under the current regulation, while providing SHOP applicants with an opportunity to address inconsistencies between a submitted application and trusted third-party data sources that a SHOP might utilize to verify eligibility under the optional verification process established in § 155.715(c)(2). The applicability of SHOP eligibility adjustment periods would be limited to circumstances where such a discrepancy occurs, and the applicant would be provided an opportunity to submit documentation proving the information submitted on the application is correct without having to initiate a formal eligibility appeal. We also proposed to amend paragraphs (d)(1) and (d)(2) to provide for eligibility adjustment periods when information submitted on an application is inconsistent with information collected through an optional verification process under § 155.715(c)(2).

We are finalizing the provisions as proposed

Comment: One commenter asked for clarity on how the inconsistency process would work to ensure that eligibility and payment systems are in sync. Issuers and aggregators will need to know immediately when an inconsistency results in a group no longer being eligible for coverage so that they will not continue to provide coverage and so they don't continue to collect premiums.

Response: Enrollment for a group might not begin until any discrepancies being reviewed through the eligibility adjustment process for the employer are resolved, but if it does, there is no reason why the issuer must terminate enrollment for the group if the employer is not determined eligible. Under guaranteed availability, the issuer generally must make the plan available both inside and outside the SHOP. If the employer is determined ineligible, an issuer may generally continue to offer coverage to a group, and the SHOP will work with the issuer to resolve any concerns related to premium payments that the employer had made to the SHOP.

7. Application Standards for SHOP

We proposed to amend § 155.730 to make explicit our interpretation of our current regulations, under which SHOPs are prohibited from collecting any information on SHOP applications other than what is required to make SHOP eligibility determinations or effectuate enrollment through the SHOP. We proposed to re-designate paragraph § 155.730(g) as paragraph (g)(1) and add new paragraph (g)(2) to provide that a SHOP is not permitted to collect information on the single employer or single employee application that is not necessary to determine SHOP eligibility or effectuate enrollment through the SHOP. We did not receive any comments on this proposal and we are finalizing the provisions as proposed.

E. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

1. Provisions Related to Cost Sharing

In the proposed rule, we proposed several provisions and parameters for the 2015 benefit year related to cost sharing, including a number of provisions relating to indexing of premium growth. For the reasons described in the proposed rule and considering the comments received, we are generally finalizing these provisions as proposed, with a few modifications. However, we note that with respect to our methodology for indexing premium growth, we will continue to analyze additional methodologies in upcoming years, especially as additional data become available, and may modify these provisions if appropriate.

a. Premium Adjustment Percentage

Section 1302(c)(4) of the Affordable Care Act directs the Secretary to determine an annual premium adjustment percentage, which is used to set the rate of increase for four parameters detailed in the Affordable Care Act: the maximum annual limitation on cost sharing (defined at § 156.130(a)), the maximum annual limitation on deductibles for plans in the small group market (defined at § 156.130(b)), and the assessable payment amounts under section 4980H(a) and (b) of the Code (finalized at 26 CFR 54.4980H in the "Shared Responsibility for Employers Regarding Health Coverage," published in the February 12, 2014 **Federal Register** (79 FR 8544)). Section 156.130(e) of 45 CFR provides that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013, and that this percentage will be published annually in the HHS notice of benefit and payment parameters.

We proposed to establish a methodology for estimating average per capita premium for purposes of calculating the premium adjustment percentage. In selecting this methodology, we considered the following four criteria:

(1) Comprehensiveness—the premium adjustment percentage should be calculated based on the average per capita premium for health insurance coverage for the entire market, including the individual and group markets, and both fully insured and self-insured group health plans;

(2) Availability—the data underlying the calculation should be available by the summer of the year that is prior to the calendar year so that the premium adjustment percentage can be published in the annual HHS notice of benefit and payment parameters in time for issuers to develop their plan designs;

(3) Transparency—the methodology for estimating the average premium should be easily understandable and predictable; and

(4) Accuracy—the methodology should have a record of accurately estimating average premiums.

Based on these criteria, we proposed that the premium adjustment percentage be calculated based on the projections of average per enrollee private health insurance premiums from the National Health Expenditure Accounts (NHEA), which is estimated by the CMS Office of the Actuary. To calculate the premium adjustment percentage for the 2015 calendar year, we proposed to use the most recent NHEA projections of average per enrollee private health insurance premiums for 2013 and 2014 ($5,128 and $5,435, respectively).[41]

[41] *See http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/*

Continued

Under that methodology, the premium adjustment percentage for 2015 would be (5,435–5,128)/5,128, or 6.0 percent.

We also considered several other sources of premium data, and sought comment on additional sources of data we should consider, and our choice of methodology. Several commenters suggested that, at least in the initial years, NHEA projections of per enrollee private health insurance premiums may not be the most appropriate source of data for calculating premium growth because it is influenced by changes in benefit design and market composition. One commenter, who supported the use of NHEA data generally, suggested that premium growth from 2013 to 2014 would be unreliable because those data will reflect issuer uncertainty about the costs of covering a previously uninsured population, and that true premium growth, reflecting any rebates required to be paid after the end of the year, could be lower. Another commenter, who supported using different NHEA data, suggested using an index tied to projected medical costs.

In response to these comments, we will calculate the premium adjustment percentage using different NHEA data—the NHEA projections of per enrollee employer-sponsored insurance (ESI) premiums. This data overlaps very significantly with the private health insurance data—according to the CMS Office of the Actuary, approximately 88 percent of enrollees in 2014 will be covered by employer-sponsored insurance. However, because it will exclude premiums from the individual market, which is likely to be most affected by the significant changes in benefit design and market composition in the early years of implementation of market reforms and is most likely to be subject to risk premium pricing (which, as the commenter noted, may be paid back to consumers after the end of the year in the form of rebates), we believe it will provide a more appropriate measure of average per capita premiums for health insurance coverage for the initial years. And because the data are also from the well-known NHEA, we believe it continues to meet our selection criteria.

Using the ESI data and our proposed methodology, the premium adjustment percentage for 2015 is the percentage (if any) by which the most recent NHEA projection of per enrollee ESI premiums for 2014 ($5,664) exceeds the most recent NHEA projection of per enrollee ESI premiums for 2013 ($5,435), or 4.213431463 percent.[42] We note that as updated 2013 NHEA data become available, we may update the 2013 estimate for purposes of calculating the premium adjustment percentage for years after 2015.

We further note that after the initial years of implementation of market reforms, once the premium trend is more stable, we may propose to change our methodology. For example we may consider changing our methodology to reflect the broader NHEA per enrollee private health insurance premium data. Additionally, as new data on health insurance premiums become available through the Exchanges and other sources, we intend to review the methodology for calculating the premium adjustment percentage. We also intend to establish consistent methodologies for indexing Affordable Care Act parameters.

In summary, we are finalizing the premium adjustment percentage methodology as proposed, using NHEA projections of per enrollee ESI premiums in place of private health insurance premiums. This premium adjustment percentage will be used to increase the maximum annual limitation on cost sharing, the maximum annual limitation on deductibles for plans in the small group market, and the assessable payment amounts under section 4980H(a) and (b) of the Code. In the preamble to the proposed rule, when calculating the proposed annual limitation on cost sharing for 2015, we rounded to the multiple of $50 that is higher than the number calculated by the formula. However, we have since learned that the convention for similar language in related tax policies is to round to the multiple of $50 that is lower than the number calculated by the formula. We strive to align policies wherever possible. As such, in future rulemaking that will be effective prior to the start of the application period for qualified health plans for the 2015 benefit year, we are considering aligning the rounding rules, and rounding to the lower multiple of $50.

Maximum Annual Limitation on Cost Sharing for Calendar Year 2015. Under § 156.130(a)(2), for the 2015 calendar year, cost sharing for self-only coverage may not exceed the dollar limit for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage for 2015. For other than self-only coverage, the limit is twice the dollar limit for self-only coverage. Using the premium adjustment percentage of 4.213431463 percent for 2015 we established above, and the 2014 maximum annual limitation on cost sharing of $6,350 for self-only coverage, which was published by the IRS on May 2, 2013,[43] the 2015 maximum annual limitation on cost sharing would be $6,600 for self-only coverage and $13,200 for other than self-only coverage, if we were to interpret § 156.130(d) and the statute to round the self-only limitation *down* to the next lower multiple of 50.

Maximum Annual Limitation on Deductibles for Plans in the Small Group Market for Calendar Year 2015. Under § 156.130(b)(2), for the 2015 calendar year, the annual deductible for a health plan in the small group market may not exceed, for self-only coverage, the maximum annual limitation on deductibles for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage for 2015, and for other than self-only coverage, the limit is twice the dollar limit for self-only coverage. Using the premium adjustment percentage for 2015 of 4.213431463 percent we established above and the 2014 maximum annual limitation on deductibles of $2,000 for self-only coverage, as specified in § 156.130(b)(1)(i), the 2015 maximum annual limitation on deductibles would be $2,050 for self-only coverage and $4,100 for other than self-only coverage, if we were to interpret § 156.130(d) and the statute to round the self-only limitation *down* to the next lower multiple of 50. We note that pursuant to 45 CFR 156.130(b)(3), a health plan's deductible may exceed the 2015 maximum annual limitation on deductibles described above in instances where the plan may not reasonably reach the AV of a given level of coverage without exceeding the annual deductible limit.

Comment: We received three comments in support of our proposal to use data from the National Health Expenditure Accounts. However, we also received several comments expressing concern with the increase in the cost-sharing limits resulting from the proposed premium adjustment percentage methodology, and the

ProjectiansMethadalagy2012.pdf and Table 17 in *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reparts/NationalHealthExpendData/Dawnlaads/Proj2012.pdf* for additional infarmatian.

[42] *See http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reparts/NationalHealthExpendData/Dawnlaads/ProjectiansMethadalagy2012.pdf* and Table 17 in *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reparts/NationalHealthExpendData/Dawnlaads/Praj2012.pdf* for additianal infarmatian.

[43] *See http://www.irs.gav/pub/irs-drap/rp-13-25.pdf.*

potential impact on affordability and consumer access to care. Commenters noted that because the maximum annual limitation on cost sharing is set based on the premium growth rate for the previous years, consumers could see increased premiums in one year and then increased out-of-pocket costs in the following year (as well as any additional premium increases)—in effect, experiencing impacts twice. Another commenter noted that the proposal would result in the divergence of the maximum annual limitation on cost sharing from the cost-sharing limit set by the IRS for high deductible health plans, which is adjusted based on the Consumer Price Index.[44] Some commenters stated that the premium adjustment percentage should not be applied until at least 2016, after the Federal government has evaluated consumer experience under the 2014 parameters. Other commenters argued that the premium adjustment percentage should not be affected by the changes in benefit design and market composition that occur between 2013 and 2014. Instead, the commenters argue that the premium adjustment percentage should be based only on the change in the cost of medical services, or on the Consumer Price Index.

Response: In response to comments, as discussed above, we are finalizing our proposed methodology for calculating the premium adjustment percentage, using NHEA projections of per enrollee ESI premiums in place of private health insurance premiums. We believe that NHEA per enrollee ESI premium data will appropriately capture the underlying drivers of premium growth, and reflect the average per capita premium for the majority of health insurance coverage in the United States. In addition, ESI data tends to be more stable and is less influenced by one-time changes in benefit design and market composition.

We do not believe it would be appropriate to use the Consumer Price Index as the basis for estimating premium growth. The Consumer Price Index captures only price changes for a fixed basket of a much broader set of goods, and thus does not reflect the drivers of health insurance premiums. Specifically, the Consumer Price Index would exclude non-price factors that influence medical costs, and thus premiums, such as changes in the utilization or intensity of medical care. Because of this, the Consumer Price Index (both for all items and for medical care) has historically increased at a slower rate than premiums. We are concerned that consistently constraining the premium adjustment percentage and the cost-sharing limits to a lower rate of growth that is not reflective of the drivers of health insurance premiums may prevent issuers from adequately adjusting plan designs to offset costs, which could result in higher premiums. We clarify that the maximum annual limitation on cost sharing established at § 156.130(a)(2) does not supersede the cost-sharing limit for high deductible health plans established by the IRS under § 223(c)(2)(A)(ii) of the Code.

Comment: One commenter recommended that the premium adjustment percentage be rounded to the nearest tenth of a percentage point, rather than the proposed "nearest decimal point."

Response: To better align with other tax- and benefit-related indexation provisions, we specify that the premium adjustment percentage will be rounded to ten significant digits. The percentage for calendar year 2015 is 4.213431463 percent.

Comment: We received two comments reporting wide variation in the application across States of the maximum annual limitation on deductibles for plans in the small group market. Commenters acknowledged the need for flexibility in order to meet actuarial value standards, but requested that HHS monitor the application of this policy.

Response: We recognize the need to balance between the required deductible limit and the ability of issuers to offer a variety of cost sharing approaches within the plan designs available to employers. We intend to work with States to assess the need for additional guidance in this area, as the States are the primary enforcers of this limit.

b. Reduced Maximum Annual Limitation on Cost Sharing

Sections 1402(a) through (c) of the Affordable Care Act direct issuers to reduce cost sharing for EHBs for eligible individuals enrolled in a silver level QHP. In the 2014 Payment Notice, we established standards related to the provision of these cost-sharing reductions. Specifically, in 45 CFR part 156 subpart E, we specified that QHP issuers must provide cost-sharing reductions by developing plan variations, which are separate cost-sharing structures for each eligibility category that change how the cost sharing required under the QHP is to be shared between the enrollee and the Federal government. At § 156.420(a), we detailed the structure of these plan variations and specified that QHP issuers must ensure that each silver plan variation has an annual limitation on cost sharing no greater than the applicable reduced maximum annual limitation on cost sharing specified in the annual HHS notice of benefit and payment parameters. Although the amount of the reduction in the maximum annual limitation on cost sharing is specified in section 1402(c)(1)(A) of the Affordable Care Act, section 1402(c)(1)(B)(ii) of the statute states that the Secretary may adjust the cost-sharing limits to ensure that the resulting limits do not cause the AVs of the health plans to exceed the levels specified in 1402(c)(1)(B)(i) (that is, 73 percent, 87 percent or 94 percent, depending on the income of the enrollee(s)). Accordingly, in the 2014 Payment Notice, we established a process for determining the appropriate reductions in the maximum annual limitation on cost sharing. First, we identified the maximum annual limitation on cost sharing applicable to all plans that will offer the EHB package. Second, we analyzed the effect on AV of the reductions in the maximum annual limitation on cost sharing described in the statute. Last, we adjusted the reductions in the maximum annual limitation on cost sharing, if necessary, to ensure that the AV of a silver plan variation will not exceed the AV specified in the statute. Below, we describe our analysis for the 2015 benefit year and our results, which we finalize as proposed.

Reduced Maximum Annual Limitation on Cost Sharing for Benefit Year 2015. We developed three model silver level QHPs and analyzed the impact on their AVs of the reductions described in the Affordable Care Act to a maximum annual limitation on cost sharing for self-only coverage ($6,600). The model plan designs are based on data collected for QHP certification for 2014 to ensure that they represent a range of plan designs that we expect issuers to offer at the silver level of coverage through an Exchange. For 2015, the model silver level QHPs include a PPO with a typical cost-sharing structure ($6,600 annual limitation on cost sharing, $1,700 deductible, and 20 percent in-network coinsurance rate), a PPO with a lower annual limitation on cost sharing ($4,500 annual limitation on cost sharing, $2,000 deductible, and 20 percent in-network coinsurance rate), and an HMO ($6,600 annual limitation on cost sharing, $2,100 deductible, 20 percent in-network coinsurance rate, and the following services with copays that are not subject to the deductible or coinsurance: $500 inpatient stay per

[44] *See* section 223(g) of the Code.

day, $350 emergency department visit, $25 primary care office visit, and $50 specialist office visit). All three model QHPs meet the AV requirements for silver health plans.

We then entered these model plans into the AV Calculator developed by HHS, and observed how the reductions in the maximum annual limitation on cost sharing specified in the Affordable Care Act affected the AVs of the plans. We found that the reduction in the maximum annual limitation on cost sharing specified in the Affordable Care Act for enrollees with household incomes between 100 and 150 percent of the FPL (2/3 reduction in the maximum annual limitation on cost sharing), and 150 and 200 percent of the FPL (2/3 reduction), does not cause the AV of any of the model QHPs to exceed the statutorily specified AV level (94 and 87 percent, respectively). In contrast, the reduction in the maximum annual limitation on cost sharing specified in the Affordable Care Act for enrollees with a household income between 200 and 250 percent of FPL (1/2 reduction), does cause the AVs of two of the model QHPs to exceed the specified AV level of 73 percent. As a result, we are finalizing our proposal that the maximum annual limitation on cost sharing for enrollees in the 2015 benefit year with a household income between 200 and 250 percent of FPL be reduced by approximately 1/5, rather than 1/2, as shown in Table 4.[45] We are further finalizing as proposed a requirement that the maximum annual limitation on cost sharing for enrollees with household incomes between 100 and 200 percent of the FPL be reduced by approximately 2/3, in alignment with the statute. As discussed in the proposed rule, these reductions in the maximum annual limitation on cost sharing align with the 2014 reductions and should adequately account for unique plan designs that may not be captured by our three model QHPs. Applying the same parameters as those specified for 2014 will reduce the administrative burden for issuers related to designing new plans, and provide greater continuity for enrollees.

TABLE 4—REDUCTIONS IN MAXIMUM ANNUAL LIMITATION ON COST SHARING FOR 2015

Eligibility category	Reduced maximum annual limitation on cost sharing for self-only coverage for 2015	Reduced maximum annual limitation on cost sharing for other than self-only coverage for 2015
Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(i) (that is, 100–150 percent of FPL)	$2,250	$4,500
Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(ii) (that is, 150–200 percent of FPL)	2,250	4,500
Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(iii) (that is, 200–250 percent of FPL)	5,200	10,400

Comment: We received two comments supporting the proposed reductions in the maximum annual limitation on cost sharing for 2015, with the caveat that HHS should monitor provider payments to ensure that cost-sharing reductions do not come at the expense of provider reimbursement. Another commenter stated that HHS should reduce the maximum annual limitation on cost sharing for enrollees with a household income between 200 and 250 percent of the FPL to be more in line with the reduction specified in section 1402(c)(1)(A)(ii) of the Affordable Care Act.

Response: As discussed in the proposed rule, selecting a reduction for the maximum annual limitation on cost sharing that is less than the reduction specified in the statute will not reduce the benefit afforded to enrollees in aggregate because QHP issuers are required to further reduce their annual limitation on cost sharing, or reduce other types of cost sharing, to meet the specified AV for the plan variation. Therefore, we are finalizing the reductions to the maximum annual limitation on cost sharing for 2015 as proposed. We do not address policy related to provider payments in this rule.

Comment: We also received a comment stating that, in addition to reducing the maximum annual limitation on cost sharing, HHS should require issuers to exempt prescription drugs from any deductibles required under a silver plan variation.

Response: As discussed in the 2014 Payment Notice, we believe the current cost-sharing reduction standards strike the appropriate balance between protecting consumers and preserving QHP issuer flexibility. As a result, we do not intend to propose any additional cost-sharing reduction plan design requirements at this time.

c. Design of Cost-Sharing Reduction Plan Variations

Following our implementation of Exchange operations for 2014, we learned that a number of issuers designed QHPs with cost-sharing parameters that apply to both EHB and benefits that are not EHB. For example, one issuer sought to establish a common deductible across all benefits. For the zero cost sharing plan variation of this QHP, this would result in a substantial deductible being applied entirely to benefits that are not EHB. As a result, we proposed to remove the standards in § 156.420(c) and (d) that require that a QHP and each of its plan variations have the same out-of-pocket spending for benefits other than EHB. Instead, we proposed that the standard in § 156.420(e)—that cost sharing for EHB from a provider (including a provider outside the plan's network) required of an enrollee in a silver plan variation may not exceed the corresponding cost sharing required in the standard silver plan or any other silver plan variation of that plan with a lower AV—would also apply to out-of-pocket spending required of enrollees in silver plan variations for a benefit that is not an EHB. Similarly, we proposed in § 156.420(d) that the out-of-pocket spending required of enrollees in the zero cost sharing plan variation of a QHP for a benefit that is not an EHB from a provider (including a provider outside the plan's network) may not exceed the corresponding out-of-pocket spending required in the limited cost sharing plan variation of the QHP, which in turn may not exceed the corresponding out-of-pocket spending

[45] We note that although the revised interpretation of the rounding standard for the maximum annual limitation on cost sharing is not yet finalized, we would not expect a different interpretation of the rounding standard to result in a significant change in our analysis of the reductions in the maximum annual limitation on cost sharing. As a result, we are finalizing these reductions in the maximum annual limitation on cost sharing for 2015 in this rule.

required in the QHP with no cost-sharing reductions.

We are finalizing the provisions as proposed, with one modification. To ensure continuity across the plan variations, we clarify in § 156.420(d) that the out-of-pocket spending required of enrollees in the zero cost sharing plan variation of a QHP for a benefit that is not an EHB from a provider (including a provider outside the plan's network) may not exceed the corresponding out-of-pocket spending required in the limited cost sharing plan variation of the QHP and the corresponding out-of-pocket spending required in the silver plan variation of the QHP for individuals eligible for cost-sharing reductions under § 155.305(g)(2)(i), in the case of a silver QHP. This modification responds to commenters' concerns that issuers may use this flexibility to selectively attract certain enrollees, and is consistent with our general policy that an enrollee in a cost-sharing reduction plan variation be provided with plan features, including out-of-pocket spending, provider network, and benefits, that are at least as good as those offered under the standard plan or any other plan variation designed to be less generous.

We also clarify that in the case of an issuer participating in an Exchange that only requires issuers to submit one zero cost sharing plan variation with the lowest premium for a set of standard plans, as described in the 2014 Payment Notice at 78 FR 15494, the issuer must ensure that the out-of-pocket spending requirement for each non-EHB benefit of the submitted zero cost sharing plan variation is less than or equal to the lowest out-of-pocket spending requirement for the same benefit of a silver plan variation for individuals eligible for cost-sharing reductions under § 155.305(g)(2)(i), if the silver plan is included in the set of standard plans.

Under these provisions, each cost-sharing reduction plan variation will continue to provide the most cost savings for which an enrollee is eligible; however, QHP issuers will be able to—though are not required to—reduce out-of-pocket spending for benefits that are not EHB for enrollees in plan variations in order to offer simpler cost-sharing designs that are consistent across EHB and benefits that are not EHB. We note, however, that in accordance with section 1402(d)(4) of the Affordable Care Act, any reductions in out-of-pocket spending for benefits that are not EHB will not be reimbursed by the Federal government because payments for cost-sharing reductions only apply to EHB.

Comment: One commenter strongly supported the proposal, stating that it will allow issuers the flexibility to develop plans that best meet the needs of the low-income population. Conversely, another commenter stated that issuers may use this flexibility to design plans that attract healthier beneficiaries and may offset any costs through premium increases. Several logistical concerns were also raised by commenters about how HHS would ensure that Federal reimbursement is not provided for these reductions, and how issuers would report and implement these reductions.

Response: As described in § 156.430(c), issuers may only submit information on reductions in cost sharing for EHB, and HHS will not provide reimbursement for reductions in out-of-pocket spending for benefits other than EHB. In addition, our changes to § 156.420(d) and (e) provide additional flexibility only with respect to different plan variations, and those provisions do not permit issuers to selectively lower cost sharing in a manner that disadvantages low-income consumers. As a result, we do not believe issuers will have any additional opportunity to attract healthy enrollees. Therefore, we are finalizing this provision as proposed, with the minor modification discussed above. We will provide additional guidance in the future for issuers on how to report out-of-pocket spending for benefits that are not EHB for purposes of QHP certification.

d. Advance Payments of Cost-Sharing Reductions

Section 1402(c)(3) of the Affordable Care Act directs a QHP issuer to notify the Secretary of cost-sharing reductions made under the statute, and directs the Secretary to make periodic and timely payments to the QHP issuer equal to the value of those reductions. Section 1412(c)(3) of the Affordable Care Act permits advance payments of cost-sharing reduction amounts to QHP issuers based upon amounts specified by the Secretary. Under these authorities, we established a payment approach in the 2014 Payment Notice under which monthly advance payments made to issuers to cover projected cost-sharing reduction amounts are reconciled after the end of the benefit year to the actual cost-sharing reduction amounts.

To implement this approach, we specified in § 156.430(a) that a QHP issuer must provide to the Exchange an estimate of the dollar value of the cost-sharing reductions to be provided over the benefit year, calculated in accordance with the methodology specified by HHS in the annual HHS notice of benefit and payment parameters. We further specified in the 2014 Payment Notice that QHP issuers did not need to submit an estimate of the dollar value of the cost-sharing reductions for the 2014 benefit year, except in the case of a limited cost sharing plan variation.[46] Instead, the Exchange sent the data that issuers submitted under §§ 156.420 and 156.470, including the AV of the standard plan and plan variation, and the EHB portion of expected allowed claims costs, to HHS for the calculation of the cost-sharing reduction advance payment rates. HHS then approved the rates and sent them back to the Exchange so that the cost-sharing reduction advance payment amounts could be reported as part of the 834 enrollment transactions, pursuant to § 156.340(a). HHS then provided advance payments to QHP issuers.

Based on our experience implementing this process for the 2014 benefit year, we proposed certain modifications to §§ 155.1030, 156.430, and 156.470. We believe these modifications will simplify the process and improve the accuracy of the calculations. Specifically, we proposed to remove the requirement detailed in § 156.430(a) that issuers develop estimates of the dollar value of the cost-sharing reductions to be provided, and instead proposed to modify § 155.1030(b)(3) to provide that an Exchange be required to use the methodology specified in the annual HHS notice of benefit and payment parameters to calculate advance payment amounts for cost-sharing reductions. We also proposed to modify § 155.1030(b)(4) so that the Exchange would no longer be required to submit issuers' advance payment estimates to HHS for approval prior to the start of the benefit year. The Exchange would simply calculate the advance payment amounts and transmit the amounts to HHS via the 834 enrollment transaction, pursuant to § 156.340(a). We then proposed in § 156.430(b)(1) that HHS provide periodic advance payments to QHP issuers based on the amounts transmitted by the Exchange. Lastly, we proposed conforming modifications to §§ 155.1030(b)(1) and 156.470(a), to remove the obligation for QHP issuers to submit, and Exchanges to review, the EHB allocation of the expected allowed

[46] If an issuer sought advance payments for the cost-sharing reductions provided under the limited cost sharing plan variation of a health plan it offers, we specified in § 156.430(a)(2) that the issuer was required to submit an estimate of the dollar value of the cost-sharing reductions to be provided.

claims costs for the plans, because this data would not be used in the proposed 2015 methodology for calculating cost-sharing reduction advance payments.

Methodology for Calculating Advance Payment Amounts for Cost-Sharing Reductions for 2015. For the 2015 benefit year, we proposed that the Exchanges use a methodology for calculating the advance payment amounts that would not require QHP issuers to submit an estimate of the value of cost-sharing reductions to be provided or the EHB portion of expected allowed claims costs, as previously required under § 156.470(a), and that would not require Exchanges to transfer data on advance payment amounts to HHS prior to the start of the benefit year. Specifically, we proposed that Exchanges calculate the monthly advance payment amount for a specific policy as the product of (x) the total monthly premium for the specific policy, and (y) a cost-sharing reduction plan variation multiplier. The cost-sharing reduction plan variation multiplier would convert the monthly premium into the appropriate monthly advance payment amount, based on the following formula:

Cost-Sharing Reduction Plan Variation Multiplier = Factor to Remove Administrative Costs * Factor to Convert to Allowed Claims Cost * Induced Utilization Factor * (Plan Variation AV − Standard Plan AV)

Where,

Factor to Remove Administrative Costs = 0.8 for all plan variations, based on the individual market MLR of 80 percent;

Factor to Convert to Allowed Claims Costs = the quotient of 1 and the AV for the standard plan, not accounting for any *de minimis* variation;

Induced Utilization Factor = one of the following factors, depending on the plan variation:

TABLE 5—INDUCED UTILIZATION FACTORS FOR PLAN VARIATIONS

Cost-sharing reduction plan variation	Induced utilization factor
73 percent AV silver plan variation	1.00
87 percent AV silver plan variation	1.12
94 percent AV silver plan variation	1.12
Limited cost sharing plan variation of bronze QHP	1.15
Limited cost sharing plan variation of silver QHP	1.12
Limited cost sharing plan variation of gold QHP	1.07
Limited cost sharing plan variation of platinum QHP	1.00
Zero cost sharing plan variation of bronze QHP	1.15
Zero cost sharing plan variation of silver QHP	1.12
Zero cost sharing plan variation of gold QHP	1.07
Zero cost sharing plan variation of platinum QHP	1.00

Standard Plan AV = the AV specified for each level of coverage at § 156.140(b), not accounting for *de minimis* variation (that is, 60, 70, 80, or 90 percent for a bronze, silver, gold, or platinum QHP, accordingly); and

Plan Variation AV = one of the following actuarial values, depending on the plan variation, not accounting for *de minimis* variation:

TABLE 6—ACTUARIAL VALUES FOR PLAN VARIATIONS

Cost-sharing reduction plan variation	Plan variation AV (percent)
73 percent AV silver plan variation	73
87 percent AV silver plan variation	87
94 percent AV silver plan variation	94
Limited cost sharing plan variation of bronze QHP	87
Limited cost sharing plan variation of silver QHP	87
Limited cost sharing plan variation of gold QHP	94
Limited cost sharing plan variation of platinum QHP	94
Zero cost sharing plan variation of bronze QHP	100
Zero cost sharing plan variation of silver QHP	100
Zero cost sharing plan variation of gold QHP	100
Zero cost sharing plan variation of platinum QHP	100

The proposed induced utilization factors would be consistent with the corresponding factors established in the 2014 Payment Notice. For the limited cost sharing plan variations, we derived the induced utilization factors based on the actuarial values proposed above, and the same assumptions used to develop the induced utilization factors for the other plan variations. We proposed to update the induced utilization factors for all plan variations in future rulemaking as more data becomes available, and stated that at that time we would consider applying them to the risk adjustment methodology that HHS will use when operating risk adjustment on behalf of a State.

The proposed methodology also utilizes the actuarial values of the standard plans and plan variations, not accounting for *de minimis* variation. Although this may slightly reduce the accuracy of the calculations, we believe it would have little overall impact, and would reduce the administrative burden on Exchanges because Exchanges would not need to develop specific multipliers for each QHP and associated plan variations. However, this approach required us to estimate an actuarial value for each type of limited cost sharing plan variation. We estimated that on average, the AV of the limited cost sharing plan variations of bronze

and silver QHPs would be 87 percent, and the AV of the limited cost sharing plan variations of gold and platinum QHPs would be 94 percent. We developed these estimates based on the data submitted by QHP issuers seeking advance payments for limited cost sharing plan variations that will be offered in benefit year 2014.

We believe the proposed methodology will improve the accuracy of the advance payments because it is based on the total premium for each policy, which in accordance with the rating rules described in §§ 147.102 and 156.80, is based on expected allowed claims costs, adjusted for the plan design and provider network, the number of individuals covered by the policy, rating area, age, and tobacco use. We are finalizing the modifications to §§ 155.1030, 156.430, and 156.470 as proposed, as well as the methodology for calculating advance payment amounts for cost-sharing reductions for 2015.

Comment: We received one comment in support of the proposed changes to the process for calculating advance payments, stating that the changes would reduce the overall administrative burden and streamline reporting requirements for issuers. We also received some comments stating that it is too early to make changes to the process, which commenters stated would require issuers to alter their systems and develop new processes for validating the advance payment amounts. One commenter noted that under the proposed process, each Exchange will be responsible for calculating the advance payment amounts as opposed to one Federal agency, which could create the potential for more errors. The commenter was also concerned with the proposal to base the advance payment amounts on the premium for the policy, as premium data could be inaccurate and subject to a complex reconciliation process. The commenters also stated that the issuer should be allowed to validate the advance payment amounts before they are finalized.

Response: We continue to believe that the modifications to the advance payment calculation process will reduce the administrative burden for all parties because issuers will be required to submit less data, and Exchanges will no longer be required to submit data to HHS prior to the start of the benefit year for the calculation and approval of the advance payment amounts. That approval process will no longer be necessary because the advance payments will be simply calculated based on the product of the cost-sharing reduction plan variation multiplier specified by HHS and the premium for the policy. This modification to the calculation should also reduce the administrative burden for issuers reviewing the advance payment amounts as part of the discrepancy reporting process because the advance payments will be based on premiums, which we presume issuers would review in connection with the advance payments of the premium tax credit. We also anticipate that FFE issuers will be able to review premium information prior to the start of the benefit year through the plan preview process. In addition, HHS plans to validate that the advance payment amounts reported via the 834 enrollment transaction are calculated in accordance with the methodology specified by HHS. Thus, we believe that this methodology and validation process should ensure the protection of Federal funds, while simultaneously limiting the administrative burden on QHP issuers and Exchanges.

Comment: One commenter expressed concern that the proposed methodology for calculating advance payments would result in lower advance payments amounts that would not cover issuers' costs. Another commenter stated that issuers should be able to request a change to the advance payment amounts mid-year if the amounts do not align with actual cost-sharing reduction amounts provided.

Response: Although we acknowledge that there are some limitations to this methodology (for example, the multiplier does not make a plan-specific adjustment for the cost of non-EHB, or account precisely for costs for large families with children not accounted for in the premium), we believe that a very small number of QHPs would be affected by these limitations, and any inaccuracies in the advance payments would be corrected through the cost-sharing reduction reconciliation process. In addition, as described at § 156.430(b)(2), HHS may adjust the advance payment amount for a particular QHP during the benefit year if the QHP issuer provides evidence that the advance payments are likely to be substantially different than the cost-sharing reduction amounts that the QHP provides.

2. Provisions on FFE User Fees

a. FFE User Fee for the 2015 Benefit Year

Section 1311(d)(5)(A) of the Affordable Care Act contemplates an Exchange charging assessments or user fees to participating health insurance issuers to generate funding to support its operations. If a State does not elect to operate an Exchange or does not have an approved Exchange, section 1321(c)(1) of the Affordable Care Act directs HHS to operate an Exchange within the State. In addition, 31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. Accordingly, at § 156.50(c), we specified that a participating issuer offering a plan through an FFE must remit a user fee to HHS each month that is equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year and the monthly premium charged by the issuer for each policy under the plan where enrollment is through an FFE.

OMB Circular No. A–25 Revised (Circular No. A–25R) establishes Federal policy regarding user fees, and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. As in benefit year 2014, issuers seeking to participate in an FFE in benefit year 2015 will receive two special benefits not available to the general public: (1) the certification of their plans as QHPs; and (2) the ability to sell health insurance coverage through an FFE to individuals determined eligible for enrollment in a QHP. Activities performed by the Federal government that do not provide issuers participating in an FFE with a special benefit will not be covered by this user fee.

Circular No. A–25R further states that user charges should generally be set at a level so that they are sufficient to recover the full cost to the Federal government of providing the service when the government is acting in its capacity as sovereign (as is the case when HHS operates an FFE). We proposed to set the 2015 user fee rate for all participating issuers at 3.5 percent. This rate is the same as the 2014 user fee rate.[47]

We are finalizing the 2015 user fee rate as proposed. Because we wish to continue to encourage issuers to offer plans through an FFE, we sought and have received an exception from OMB to the policy in Circular No. A–25R that the 2015 user fee be set to recover full

[47] OMB granted HHS an exception to the policy in Circular No. A–25R, allowing HHS to set the user fee rate for 2014 at 3.5 percent, rather than a higher rate which would have allowed HHS to recover full costs. This rate was chosen because we wished to encourage issuers to offer plans on FFEs and to align with the administrative cost structure of State Exchanges.

costs. We expect to cover full costs in future years.

Comment: We received several comments stating that both the 2014 and 2015 user fee rate should be lower because of the technical problems associated with FFE operations. Although the FFE performs important functions, issuers have had to take a larger role in supporting the processing of enrollment files and payments. One commenter specifically stated that the FF–SHOP user fee for 2014 should be waived due to the operational delays. Another commenter suggested that the 2014 user fee should be waived to offset issuers' costs resulting from an unbalanced risk pool. For the same reason, the commenter also suggested the annual fee imposed on health insurance providers, described in section 9010 of the Affordable Care Act, should be waived. Some other commenters noted that the 2015 user fee should be lower as a result of gains in operational efficiency and the expected increase in the number of State Exchanges.

Response: As discussed above, Circular A–25R specifies that a user charge should be assessed against recipients of special benefits derived from Federal activities beyond those received by the general public. Despite the 2014 technical issues, participating issuers will continue to receive special benefits through Federal activities. For example, issuers participating in an FF–SHOP will continue to receive the special benefits of the certification of their plans as QHPs and the ability to sell health insurance coverage to employers determined eligible to participate in the SHOP. In addition, we do not expect the cost to the Federal government of providing these special benefits to change appreciably. As a result, we are not changing the 2014 user fee rate. We are also finalizing the 2015 user fee rate at 3.5 percent, as proposed, based on the expected number of Federally-facilitated Exchanges in 2015 and our projected costs.

Changes to the risk pool will be addressed through the premium stabilization programs. Standards regarding the annual fee imposed on health insurance providers were finalized by the IRS on November 29, 2013 (78 FR 71476), and we direct commenters with questions regarding that fee to the IRS. Finally, we agree that over time we expect operational efficiencies and increases in the number of State Exchanges and will continue to take these factors into account when determining the annual FFE user fee rate.

Comment: We received two comments on the underlying structure of the FFE user fee. One commenter recommended that HHS establish broad-based financing for the FFE, such as an as assessment on all health care industry entities. If the existing fee structure is kept, the commenter stated that it should only be paid by consumers and small employers that purchase coverage through an FFE. The commenter also stated that the user fee should not be set as a percent of premium, as the cost to run an Exchange is not related to the cost of coverage. In contrast, another commenter stated that the user fee should continue to be calculated as a percent of premium, which ensures the user fee is adjusted based on the size of the issuer's book of business.

Response: The FFE user fee will continue to be assessed as a percent of the monthly premium charged by issuers participating in an FFE. In accordance with Circular A–25R, issuers are charged the user fee in exchange for receiving special benefits beyond those that accrue to the general public. Setting the user fee as a percent of premium ensures that the user fee generally aligns with the business generated by the issuer as a result of participation in an FFE.

Comment: One commenter also recommended that HHS publish cost estimates for the FFE, disclose how funds will be spent, and develop performance metrics for the FFE. The commenter stated that any increase in an issuer's aggregate liability for FFE user fees should be capped at changes in the Consumer Price Index, and that total user fee collections across all issuers should be capped at the level of expended costs. The commenter urged that if user fee collections exceed FFE costs, issuers should receive a rebate or credit against future fees.

Response: HHS will continue to publish cost estimates through the Federal budget process, and performance results from time to time, as has been our practice thus far. We will also continue to set the user fee based on the expected costs to the Federal government of providing the special benefits to issuers; however, for 2015 as noted above, we sought and have received an exception to this policy from OMB because we wish to continue to encourage issuers to offer plans through an FFE. We expect to cover full costs in future years. Because we set the user fee to no more than cover Federal costs (and in the case of 2014 and 2015, at less than our predicted costs), we do not expect user fee collections to exceed the Federal cost of operating the FFE.

b. Adjustment of FFE User Fee

Section 2713(a)(4) of the PHS Act, as added by the Affordable Care Act and incorporated into the ERISA and the Code, directs non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to provide benefits for certain women's preventive health services without cost sharing.[48] The Preventive Services Rule (78 FR 39870, July 2, 2013) established accommodations with respect to the contraceptive coverage requirement for health coverage established or maintained or arranged by eligible organizations.[49]

Each organization seeking to be treated as an eligible organization under the Preventive Services Rule is required to self-certify that it meets the definition of an eligible organization. In the case of an eligible organization with a self-insured plan, a copy of the self-certification must be provided to all TPAs with which it or its plan has contracted. Upon receipt of the copy of the self-certification, the TPA may decide not to enter into, or remain in, a contractual relationship with the eligible organization to provide administrative services for the plan. A TPA that receives a copy of the self-certification and that agrees to enter into or remain in a contractual relationship with the eligible organization to provide administrative services for the plan must provide or arrange for separate payments for certain contraceptive services for participants and beneficiaries in the plan without cost sharing, premium, fee, or other charge to plan participants or beneficiaries, or to the eligible organization or its plan. The TPA can provide such payments on its own, or it can arrange for an issuer or other entity to provide these payments. In either case, the payments are not health insurance policies and the TPA can make arrangements with an issuer offering coverage through an FFE to obtain reimbursement for its costs

[48] The women's preventive health services referenced by PHS Act section 2713(a)(4) are provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA). On August 1, 2011, HRSA adopted and released guidelines for women's preventive health services based on recommendations of the independent Institute of Medicine.

[49] Under the Preventive Services Rule, an eligible organization is an organization that: (1) Opposes providing coverage for some or all of the contraceptive services required to be covered under section 2713 of the PHS Act and the companion provisions of ERISA and the Code on account of religious objections; (2) is organized and operates as a nonprofit entity; (3) holds itself out as a religious organization; and (4) self-certifies that it satisfies the first three criteria.

(including an allowance for administrative costs and margin) through an adjustment to the FFE user fee paid by the issuer.

At § 156.50(d), we established standards related to the administration of the user fee adjustment. Specifically, in § 156.50(d)(3)(ii), we stated that the user fee adjustment will include an allowance for administrative costs and margin that is no less than 10 percent of the total dollar amount of the payments for contraceptive services, and that HHS would specify the allowance for a particular calendar year in the annual HHS notice of benefit and payment parameters.

For user fee adjustments sought in 2015 for the cost of payments for contraceptive services provided in 2014, we proposed an allowance for administrative costs and margin equal to 15 percent of the total dollar amount of the payments for contraceptive services defined in § 156.50(d)(3)(i).[50] We proposed this allowance based on our analysis described in the proposed rule of the administrative costs that we expect each entity involved in the arrangement to incur. We are finalizing the allowance for administrative costs and margin at 15 percent, as proposed.

Comment: We received several comments expressing concern that the proposed allowance would not adequately cover administrative costs. One commenter emphasized that the allowance should take into account startup costs, including systems development, contract negotiations, customer service outreach, and provider support. Another commenter stated that there will be wide variation in administrative costs depending on whether the TPA operates in a State with an FFE, or if the beneficiaries live in multiple States. The commenter also noted that TPAs may incur care coordination costs related to contraceptive services, which should be covered by the allowance. As a result, the commenter recommended that HHS permit TPAs to accept either the 15 percent allowance or request a different amount based on expected costs. Another commenter noted that amounts paid for contraceptive services may be low compared to fixed administrative costs, particularly if the payment is for a low cost generic drug. The commenter suggested that HHS provide a greater allowance for administrative costs and margin when the volume of contraceptive services falls below a set threshold.

Response: As discussed in the proposed rule, the proposed allowance was set to cover the administrative costs and margin for all of the entities involved in the relationship. We recognize that administrative costs may vary between TPAs depending upon their arrangement with an issuer participating in an FFE and the total costs of contraceptive services for which they provide payment. However, we believe that the proposed allowance should adequately cover expected administrative costs for the majority of TPAs and the issuers through which they receive the FFE user fee adjustment. We do not intend to allow TPAs to submit requests for greater allowances for administrative costs and margin, or for different categories of costs, such as startup or overhead costs, because it would be difficult to verify these costs and sufficiently safeguard Federal funds.

Comment: One commenter requested clarification that the FFE user fee adjustment is intended to cover the full cost of the payments for certain contraceptive services, plus an additional 15 percent, for administrative costs and margin.

Response: As described in § 156.50(d)(3), the user fee adjustment will be equal in value to the sum of the dollar amount of the payments for contraceptive services, plus a 15 percent allowance for administrative costs and margin.

Comment: We received several general comments on the accommodation for eligible organizations with a self-insured plan. Commenters noted that there is no requirement for issuers participating in an FFE to enter into arrangements with TPAs of eligible organizations with self-insured plans. As a result, commenters requested that HHS identify an alternative method to reimburse TPAs.

Response: In this final rule, we are specifically establishing the allowance for administrative costs and margin. As discussed in the Preventive Services Rule, we continue to believe the allowance for administrative costs and margin should provide an incentive for issuers to enter into arrangements with TPAs of eligible organizations with self-insured plans.

Comment: One commenter requested that HHS modify the standards related to MLR to align with the accommodations finalized in the Preventive Services Rule.

Response: We do not believe it is necessary to modify the regulations, but instead provided guidance on this topic in the preamble to the Preventive Services Rule (see 78 FR 39886).[51] Specifically, we noted that under 45 CFR part 158, participating issuers may deduct from premiums as licensing and regulatory fees any amounts paid out to a third party administrator or incurred by or for the issuer in contraceptive claims costs under the accommodations for self-insured group health plans of eligible organizations, plus the allowance for administrative cost and margin allowed under 45 CFR 156.50(d)(3)(ii), along with their net FFE user fee paid to HHS. We further here clarify that an issuer of group health insurance coverage that makes payments for contraceptive services for participants and beneficiaries of its insured health plans under the accommodations for eligible organizations rules may treat those payments as an adjustment to claims costs for purposes of MLR and risk corridors program calculations. As discussed in the Preventive Services Rule, this adjustment would compensate for any increase in incurred claims associated with making payments for contraceptive services.

3. AV Calculation for Determining Level of Coverage

Section 2707(a) of the PHS Act and Section 1302 of the Affordable Care Act direct non-grandfathered health insurance issuers in the individual and small group markets, including QHPs, to ensure that plans meet a level of coverage specified in section 1302(d)(1) of the Affordable Care Act and codified at § 156.140(b). On February 25, 2013, HHS published the EHB Rule implementing section 1302(d) of the Affordable Care Act, which sets forth the requirement that, to determine the level of coverage for a given metal tier level, the calculation of AV be based upon the provision of EHB to a standard population. Section 156.135(a) establishes that AV is to be calculated using the AV Calculator developed and made available by HHS.

HHS recognizes that certain routine changes will on occasion need to be made to facilitate the AV Calculator's ongoing operation by ensuring that it

[50] We note that the submission of the dollar amount of the payments for contraceptive services is subject to the oversight standards detailed at 45 CFR 156.50(d)(7), as well as the False Claims Act, 31 U.S.C. 3729–3733.

[51] That guidance stated that ". . . for purposes of the medical loss ratio and the risk corridors program, participating issuers should report the sum of: (1) The net FFE user fee paid to HHS; (2) any amounts paid out to a third party administrator or incurred by or for the participating issuer in contraceptive claims costs under the accommodation for self-insured group health plans of eligible organizations provided in these final regulations; and (3) the allowance for administrative costs and margin provided under 45 CFR 156.50(d)(3)(ii), as licensing and regulatory fees referenced in 45 CFR 158.161(a)."

can accommodate changes in the marketplace or product design over time and due to the changing cost of providing health care services in the market. In accordance, we proposed to update certain aspects of the AV Calculator on a regular basis, but no more frequently than annually.

In proposed § 156.140(g), HHS proposed to update the AV Calculator as follows. First, we proposed to update for the annual limit on cost sharing and related functions based on a projected estimate to enable the AV Calculator to comply with § 156.130(a)(2). Second, we proposed to update the continuance tables to reflect more current enrollment data when HHS has determined that the enrolled population has materially changed, defined as more than 5 percent different. Third, we proposed to update the algorithms when HHS has determined the need to adapt the AV Calculator for use by additional plan designs or to allow the AV Calculator to accommodate potential new types of plan designs, where such adaptations can be based on actuarially sound principles and will not have a substantial effect on the AV calculations performed by the then current AV Calculator. To identify new industry practices and technical advances, we proposed a process to consult annually with the American Academy of Actuaries and to take into consideration feedback received through CMS Actuarial Value email address at: *actuarialvalue@cms.hhs.gov*. Fourth, we also proposed to update the continuance tables to reflect more current claims data no more than every 3 and no less than every 5 years and to annually trend the claims data when the trending factor is more than 5 percent different, calculated on a cumulative basis. To trend the AV Calculator, we proposed to use premium data and/or standard population data in years when the underlying claims data are not being updated in the AV Calculator, and in years where the claims data are being updated, we proposed to trend the Calculator based on the updated claims data. Lastly, we proposed to update the AV Calculator user interface when a change would be useful to a broad group of users of the AV Calculator, would not affect the function of the AV Calculator, and would be technically feasible.

Along with the parameters for updating the AV Calculator, we also proposed to amend § 156.135(a) to clarify that issuers would be required to use the AV Calculator published by HHS for a given benefit year or, in cases where a State has obtained HHS approval to use State specific data in the AV Calculator, issuers would be required to use that AV Calculator HHS has published for the given benefit year, adjusted to use the State's data (State AV Calculator).

Lastly, we solicited comments on the proposed 2015 AV Calculator and AV Calculator methodology that would replace the 2014 versions of the Calculator and methodology, respectively. For the 2015 AV Calculator, HHS proposed to make minor changes to the design and inputs into the AV Calculator and did not propose updating the claims data, including the trending factor, or the enrollment data, since data were not yet available.

We are finalizing the regulatory provisions as proposed but we are not finalizing the 2015 AV Calculator and 2015 AV Calculator methodology. Rather, under the regulatory parameters for updating the AV Calculator, we are finalizing the 2014 AV Calculator to account for the estimated annual limit on cost sharing of $6,850 and will update the 2014 AV Calculator methodology accordingly. These materials will also include non-substantive amendments to correct and clarify language, as well as some clarifying frequently asked questions, that do not reflect changes in the functioning of the AV Calculator. Through this final rule, the amended 2014 documents are being finalized as the 2015 AV Calculator and AV Calculator methodology.

Comment: Several commenters recommended that since the proposed version of the 2015 AV Calculator and the parameters to update the AV Calculator in the future can impact the AV of plan designs, CMS should increase the *de minimis* range to prevent issuers from having to make benefit changes in order to be able to continue offering the same plans, including plans for 2015 plans being offered in 2014. Other commenters submitted technical comments on the 2015 AV Calculator updates, as well as recommended that we not update the AV Calculator for 2015 unless other circumstances were met.

Response: We do not intend to change the *de minimis* range. The *de minimis* range is intended to allow plans to float within a reasonable range and is not intended to freeze plan designs preventing innovation in the market.

Because the AV Calculator is a dynamic tool, it is impossible to make changes to the Calculator's algorithms without potentially impacting the AV output. However, we limited the changes in the proposed 2015 AV Calculator to promote stability of the AV Calculator and to help better ensure that issuers did not have to make benefit changes in 2015 in order to remain within the *de minimis* range. For instance, we did not update the enrollment or claims data because actual data were not available and we did not want to update the AV Calculator based on another projection. In fact, the vast majority of the updates to the proposed 2015 AV Calculator were the direct result of comments that we had received from issuers on improvements in the algorithms and adding additional functionality to the AV Calculator based actuarially sound principles to allow more issuers to use the AV Calculator without adjustment.

Given the limited changes that were being made in the proposed 2015 AV Calculator and that we were not updating the AV Calculator based on the enrollment and claims data for 2015, we are finalizing the 2014 AV Calculator as the 2015 AV Calculator with an updated estimated annual limit on cost sharing to help ensure that issuers do not have to make benefit changes between year 1 and year 2.

Since we are not finalizing the proposed 2015 AV Calculator at this time, with the exception of the updated estimated annual limit on cost sharing, we do not address the technical comments on the proposed 2015 AV Calculator and methodology, but we will take them under consideration if we propose updates to the AV Calculator in the future.

Comment: Commenters wanted the final version of the 2015 AV Calculator to be available early in 2014 and recommended that we ensure that issuers have enough time to work with the final version of the AV Calculator, proposing various annual deadlines.

Response: We recognize that issuers need time to work with the final version of the Calculator to develop their plan designs for a given benefit year. By finalizing the amended 2014 AV Calculator as the 2015 AV Calculator, our intention is to reduce the burden on issuers for 2015 in having to make adjustments to plan designs and do any recalculations with changes to the AV Calculator.

In future years, our intention with finalizing the provisions under § 156.135(g) is to allow us the option to release the final AV Calculator earlier in the year. However, certain updates to the AV Calculator will be dependent on the timeline of availability of the necessary data elements. Thus, while we will work to make the AV Calculator available as early as possible, we intend to release it no later than the end of the first quarter of the preceding the benefit year.

Comment: Some commenters expressed concern about the frequency and potential fluctuations as a result of the updates based on enrollment data, especially given the potential for dramatic changes in the enrolled population in the initial years. Commenters recommended that the enrollment and claims data updates be made as soon as possible or at the same time. Others asked for clarification on the types of statistics being used for the updates and the exact year that we intend to start updating based on enrollment data.

Response: Our policy is to consider updating the AV Calculator, starting with the 2016 AV Calculator, annually based on enrollment data when the combined measurement of the effects of shifts in gender or age statistics are materially different, which we define as more than 5 percent. We are finalizing this threshold for updating based on enrollment data of more than 5 percent to help ensure that updates based on enrollment data are limited. We also recognize the importance of balancing changes in the AV Calculator between ensuring that the AV Calculator is more accurately reflecting the current market and ensuring that any change to the AV Calculator minimizes the disruptions to current plan designs.

Comment: A commenter recommended that we consider updating based on utilization by income. Others expressed concern about the cost sharing limits in the AV Calculator. Comments included a request for additional information on the trending factor update particularly regarding the use of premium data, as well as a recommendation to set a higher threshold for applying the trend factor.

Response: AV is the calculation of a plan's cost sharing generosity that is applied to a standard population and does not take into account utilization by income level. Information on the development of the standard population is included in the AV Calculator methodology document. Income level is factored into other parts of the market, such as the enrollee's eligibility for cost sharing reductions. The cost sharing limits in the AV Calculator are reflective of the requirements under section 1302(c) of the Affordable Care Act, as implemented in regulations codified at § 156.130(a)(2).

When updating the trending factor in the AV Calculator, we will use two sources of data, one to reflect the individual market and one to reflect the small group market, to develop a single trend factor that could be applied to the AV Calculator that could be based on the premium rate data and/or the standard population data compared from year to year. For premium rate data, these updates will be reflective of a combination of utilization and unit price increases. We intend to use the premium data to trend the Calculator because it is a reliable source of data that is easily accessible and a good indicator of the market cost changes from year to year. This premium rate data will be modified for proper actuarial adjustments to develop the trend factor, including adjustments for the transitional reinsurance program. These adjustments will be detailed in the AV Calculator methodology. As we discussed in the proposed rule, we will consider trending the AV Calculator every year and in cases, where the trend factor is cumulatively more than 5 percent different from the previous time the AV Calculator was updated, we would implement the trend factor.

Comment: Commenters requested additional guidance on a variety topics related to the AV Calculator as well as analysis of AV policy. Other commenters expressed concern that updates to the algorithms could impact plans' AV. Some commenters requested the opportunity to provide input on future updates to the AV Calculator and requested information about how these updates would apply to the minimum value calculator and any State AV Calculator.

Response: The standard that we will apply in making algorithm adaptations will be to have the minimum impact possible on the outcomes produced by the AV Calculator generally while still allowing it to be adaptable to the new types of plan designs and allowing more types of plan designs to use the AV Calculator. However, as noted above, because the AV Calculator is a dynamic tool, it is impossible to make changes to the Calculator's algorithms without potentially impacting the AV output.

Guidance on the operation and functions of the AV Calculator is included in both the AV Calculator Methodology and the AV Calculator User Guide. As we update the AV Calculator in future plan years, we will revise these documents to provide our analysis and clarification where possible. In addition to taking into consideration stakeholder feedback that is submitted to the CMS Actuarial Value email address at *actuarialvalue@cms.hhs.gov* during the year, we will consult with the American Academy of Actuaries as well as the National Association of Insurance Commissioners and will intend to release a draft version of the AV Calculator through guidance for comment. This guidance will include an updated AV Calculator Methodology to explain the changes that were made to the AV Calculator. We also intend to provide future guidance on the parameters for updating a State AV Calculator. The Department of Treasury and the Internal Revenue Service are aware of our updates to the AV Calculator and may consider updates to the minimum value calculator.

Comment: We received two comments on potential data sources for family plans. Other commenters requested additional clarity on incorporating family plans as well as recommending that issuers should not be required to include family coverage in their AV calculation.

Response: We are interested in learning more about the potential for States' all payer claims databases systems to account for family plan cost sharing, but since many of these systems are still in development, we will monitor these systems to consider this option in the future. In the meantime, we will continue to maintain the policy for accounting for family plans that we provided in the "2014 Letter to Issuers on Federally-facilitated and State Partnership Exchanges."[52]

We believe that determining AV based on the cost sharing applicable to an individual is appropriate for most family plans and that for most plans, the amount of the change in AV due to a more exact calculation of family cost sharing is likely to be within the *de minimis* range. However, if the issuers finds that this approach will not yield an appropriate AV for a specific family plan, then the issuer should use an alternative AV calculation method under § 156.135(b) providing the appropriate documentation. We will continue to consider potential AV calculation modifications in this area.

4. National Annual Limit on Cost Sharing for Stand-Alone Dental Plans in an Exchange

We proposed to impose a specific annual limit on cost sharing for the pediatric dental EHB when offered through a stand-alone dental plan (SADP) of $300 for one covered child and $400 for two or more covered children. The annual limit on cost sharing was proposed to apply for SADPs certified by all Exchanges. Further, due to the limited variation in cost sharing with a decreased annual limit on cost sharing, we proposed

[52] Letter to Issuers on Federally-facilitated and State Partnership Exchanges, April 5, 2013, available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2014_letter_to_issuers_04052013.pdf.*

removing the AV requirement applicable to SADPs offered through the Exchanges that had been established previously through rulemaking.

We are finalizing the annual limit on cost sharing with an increase compared to the proposed levels, to apply to SADPs certified by all Exchanges nationally. In response to comments that the actuarial value would still be a valuable standard for SADPs, we are not finalizing our proposal to delete the actuarial value requirement at § 156.150(b).

Comment: Several commenters voiced concerns about a lowered annual limit on cost sharing, primarily related to the anticipated increase in premiums and concerns that a reduced annual limit on cost sharing would result in plan designs that impose deductibles on more of the preventive pediatric dental services. Commenters stated that these higher up-front costs would be a deterrent to consumers purchasing SADPs for their children if the pediatric dental EHB was not included in the QHP. Some commenters suggested that CMS wait to change the limit until more information is available on the first year of experience and to avoid disruption for consumers in the plan designs for year two, and a number suggested that the family to single limit ratio remain 2:1. Other commenters supported the approach for its impact on reducing the total out-of-pocket costs for a consumer enrolled separately in QHPs and SADPs.

Response: We understand that trade-offs exist between the different cost levers in a plan design, such as premiums, deductibles, and annual limits on cost sharing. Accordingly, we requested comment on the proposed annual limits on cost sharing, and specifically whether a higher or lower limit would be appropriate for the pediatric dental EHB. In light of the comments received, we are finalizing the SADP annual limits on cost sharing with increases of $50 on the single child limit and $300 on the limit for two or more children. The national annual limits on cost sharing for the pediatric dental EHB when offered as part of a stand-alone dental plan are $350 for one covered child and $700 for two or more covered children. We believe that this will provide more benefit design flexibility to dental issuers, which will reduce the potential impact on premiums and other cost-sharing, while also furthering our originally stated goal in the proposed rule of reducing the total annual limit on cost sharing for consumers who are enrolled in both QHPs and SADPs. The greater increase in the limit for two or more children enrollees is to retain the 2:1 ratio of family, as suggested by commenters, to be consistent with the ratio for medical plans.

Comment: Regarding the removal of the AV standards, most commenters suggested that CMS return to the previous AV standards so that consumers would continue to have a means of comparison between the relative levels of coverage and out of concern that, without such standards, SADPs could transfer more cost sharing to up-front deductibles that would result in an AV below 70 percent.

Response: We believe that the commenters raised valid points regarding the value to a consumer of an AV level and, accordingly, we will not finalize the deletion of the actuarial value standards for SADPs previously established in the EHB Rule. The standard for SADPs is that they must meet *either* the 70 percent or 85 percent AV level. We understand that with the reduction in the annual limit on cost sharing, the lower of the two limits—70 percent—may be more difficult to meet, but in such cases the SADP could instead target the 85 percent level.

Comment: A small number of commenters supported the approach to having the annual limit on cost sharing for the pediatric dental EHB in SADPs as a national limit, as opposed to allowing State flexibility.

Response: We agree with the commenter and are finalizing the rule to apply nationally.

5. Additional Standards Specific to SHOP

We proposed adding paragraph (a)(4)(i) to § 156.285 to provide that a qualified employer in the SHOP that becomes a large employer would continue to be rated as a small employer, regardless of whether the QHP being sold through the SHOP is sold in the small group market or the large group market. To assure consistency of pricing within the SHOP, we proposed to require a QHP offered through the SHOP to comply with the rating rules described in § 147.102. Nothing in this proposal prevents such an employer from choosing to buy a guaranteed issue new policy (without small group rating rules) in the large group market outside of the SHOP. We are making a minor change from the proposed rule to add "being sold through the SHOP" to § 156.285(a)(4)(i).

We proposed in amendments to § 156.285(a)(4)(ii) to not allow for composite premiums in the FF–SHOPs when an employer chooses a level of coverage and makes all QHPs within that level available to its employees. In the proposed rule preamble, we also indicated that we were considering extending the proposed limitation on composite premiums to SADPs in the FF–SHOPs, and invited comment on whether such a prohibition should be adopted. We acknowledge that this proposal would create a limited exception to § 147.102(c)(3) and that it would preempt State laws requiring or permitting composite premiums in the small group market, but we believe this proposal to be limited in scope and tailored to provide for administrative efficiency and uniformity, system compatibility among the FF–SHOPs, and increased competition and choice in the small group market. We are finalizing the provisions with a change reflecting that, in response to comments solicited and received on whether the proposal to limit composite premiums in an employee choice environment should be extended to SADPs, we have decided to extend that limitation to SADPs when an employer opts to offer employees the choice of all SADPs at a dental actuarial value level.

Because the proposed amendments to § 155.705(b)(4) summarized above are being finalized as proposed, all SHOPs will be permitted to establish standard methods for premium payment under § 155.705(b)(4), as part of carrying out the premium aggregation function, and HHS will establish through guidance a process and timeline for employers to follow when remitting premium payments to the FF–SHOPs once premium aggregation becomes available in the FF–SHOPs. We anticipate that after premium aggregation becomes available in the FF–SHOPs, an FF–SHOP would transmit premium payments—both initial and subsequent—to issuers on a regular schedule and anticipate that this would be no more frequently than once a week.

We proposed adding § 156.285(c)(7)(iii) to establish that a QHP issuer offering a QHP through an FF–SHOP would be required to enroll a qualified employee unless it receives a cancellation notice for that employer from the FF–SHOP. This operational scenario would arise only in the case of an employer's initial premium payment. For regular monthly payments from a participating SHOP employer, the requirements of the payment timeline and process established in accordance with new § 155.705(b)(4)(ii)(A) (as finalized in this rule) and the termination provisions of § 155.735 would apply. We are finalizing this provision as proposed.

Comment: Several commenters supported our proposal to limit composite premiums in FF–SHOPs to employers who choose to offer their

employees a single QHP. In addition to supporting our proposal, many of these commenters stressed that composite premiums should always be optional for issuers participating in FF–SHOPs (unless required by State law or regulation). A few commenters, however, support composite premiums for employee choice and believe it will add to the value-proposition of FF–SHOPs.

Response: As we discussed in the preamble to the proposed rule, our proposal to make composite premiums in the FF–SHOPs unavailable to qualified employers offering employee choice was motivated by our concern that the amendments to § 147.102 finalized in this rule would adversely affect issuers in an employee choice environment, creating an incentive for issuers to avoid participating in the FF–SHOPs and undermining the Affordable Care Act's goals of increased choice and competition in the small group market. That is because, under the composite premium provisions of § 147.102(c)(3), if an issuer offers composite premiums, the average enrollee premium amount established at the time of the initial group enrollment would not change until renewal, even if the composition of the group changes in the interim. For example, if several older employees joined the group or several employees terminated their coverage, the composite premium would remain the same until renewal. Because any risk related to a change in the group's composition is divided among issuers in an employee choice environment, they would be taking on proportionately more risk than in a single plan environment where the issuer would be assuming the risk—good and bad—for the entire group. In light of these concerns, we continue to think the prohibition on composite premiums in an employee choice environment is warranted, and are finalizing this policy as proposed through the amendment to § 156.285(a)(4), so as to not allow for composite premiums in an employee choice environment.

Comment: We received some comments agreeing with our proposal to extend to SADPs in the FF–SHOPs the proposed limitation on composite premiums in an FF–SHOP when an employer selects a level of coverage and makes all QHPs within that level available to its employees.

Response: In response to these comments, we are modifying the final rule to provide that the limitation on composite premiums in an employee choice environment applies to both medical QHPs and SADPs, in circumstances where the employer offers employees a choice of all plans at a given AV level or dental AV level. As is the case with composite premiums for medical QHPs, we believe composite premiums for SADPs could potentially adversely affect issuers when the employer offers employees all SADPs at a given dental AV level, and could create an incentive for SADP issuers to avoid participating in the FF–SHOPs and undermine the Affordable Care Act's goals of increased choice and competition in the small group market. Therefore, we have finalized this provision with additional language establishing that the limitation on composite premiums also applies for SADPs when employees are given a choice of SADPs at a given dental AV level.

Comment: We received varying comments on our proposal to require issuers in FF–SHOPs to effectuate coverage unless they receive a cancellation notice for non-payment of premium. Some commenters supported our proposal to require issuers to effectuate coverage if the FF–SHOP does not send a cancellation transaction prior to the coverage effective date. Some commenters opposed our proposal, stating that issuers should not be required to effectuate coverage before receiving the initial premium payment from the FF–SHOP. One commenter stated that issuers typically have payments in hand prior to coverage effectuation, giving issuers time to ensure that member enrollment packets can be sent out prior to the enrollment cut-off date. One commenter took a similar position, though suggested that issuers be allowed to pend claims until the initial payment is received by the FF–SHOP. Another commenter stated that the proposed policy could lead to provider reluctance to participate in Exchange plans. Finally, one comment suggested that a potential solution to this timing issue would be for the FF–SHOP to transmit daily payments to issuers.

Response: This rule does not require issuers to effectuate coverage if the FF–SHOP does not receive a premium payment by the deadline established for the FF–SHOP. If payment is not received by the FF–SHOP prior to that deadline, CMS will issue a cancellation notice, or, in the case of payments subsequent to the initial premium payment, a termination notice to issuers for non-payment of premium. In addition, we anticipate sending issuers weekly premium payments, so the length of time between receipt of payment and premium remittance is not expected to be more than approximately one week. Therefore, we are not modifying our proposal in response to these comments.

6. Meaningful Difference Standard for QHPs in the FFEs

Section 1311(e)(1)(B) of the Affordable Care Act, codified at § 155.1000(c)(2), sets forth the standard that the Exchange may certify a health plan as a QHP if it determines that making the plan available through the Exchange is in the interests of qualified individuals and qualified employers in the State or States in which such Exchange operates. Therefore, as a means of ensuring that all QHPs offered through an FFE are in the interest of qualified individuals and qualified employers, we proposed that, to be certified as a QHP in an FFE, a plan must be considered "meaningfully different" from all other plans offered by the same issuer through the same Exchange, and we proposed a standard for what is meant by the term "meaningfully different."

In § 156.298(a), we proposed that the FFEs and FF–SHOPs would impose a meaningful difference requirement when approving a QHP application for certification of multiple QHPs within a service area and level of coverage in the Exchange from a single issuer. Due to the special characteristics of the SADP market, HHS proposed not to require meaningful difference as a condition for certification among SADPs at this time. We proposed, in § 156.298(b), that a plan within a service area and metal tier (bronze, silver, gold, or platinum, and catastrophic coverage) would be considered meaningfully different from other plans if a reasonable consumer (the typical consumer buying health insurance coverage) would be able to identify at least two material differences among seven [53] key characteristics between the plan and other plans to be offered by the same issuer. The key characteristics were proposed in paragraphs (b)(1)–(b)(7), and include (1) cost sharing; (2) provider networks; (3) covered benefits (including prescription drugs); (4) plan type (for example, HMO or PPO); (5) premiums; (6) health savings account eligibility; and (7) self-only, non-self-only, or child-only coverage offerings. We proposed that, at a minimum, a reasonable consumer would have to be able to identify two or more of the characteristics proposed at § 156.298(b) as different in order for the plan to pass the meaningful difference test. Therefore, within a service area and level of coverage in an Exchange, if two

[53] We acknowledge that the proposed 2015 Payment Notice listed seven elements, but referred erroneously to eight elements.

plans submitted by a single issuer seeking QHP certification vary among their cost sharing and covered benefits features but have the same premiums, the plans would be deemed as having met the meaningful difference test.

Furthermore, to ensure that consumers have an adequate number of plan options across all metal levels of coverage, we proposed at § 156.298(c), that if HHS determines that the plan offerings at a particular metal level (including catastrophic plans) within a county are limited, plans submitted for certification at that level within that county would not be subject to the meaningful difference requirement.

To provide flexibility for issuers that merge with or acquire another issuer that is a separate legal entity, HHS proposed in § 156.298(d), a 2-year meaningful difference transition period starting from the date on which a QHP issuer (acquiring entity) obtains or merges with another issuer. We proposed in paragraph (d) that during the first 2 plan years after a merger or acquisition, the acquiring entity can offer plans that were recently obtained or merged from another issuer that do not meet the meaningful difference standard.

We are finalizing the provisions with the following modifications. To address concerns with the proposed meaningful difference standard, we have modified § 156.298(b) to have the standard set at one material difference rather than two, and have removed premiums as one of the characteristics among which plans must be different. We are not finalizing the text proposed at § 156.298(b)(5) and are therefore renumbering the provisions proposed at § 156.298(b)(1)–(7) as § 156.298(b)(1)–(6). To be consistent with previous HHS language used for other guidance and regulation, we have modified § 156.298(b)(6) (previously § 156.298(b)(7)) to read "child-only plan offerings" rather than "child-only offerings."

Comment: Several commenters were supportive of the standard in general, but they also recommended modifying the standard from two differences to one to be consistent with the guidance CMS released for the 2014 coverage year. Furthermore, issuers believed strongly that one material difference (that is, plan type of HMO vs. PPO) would have a large enough impact for consumers to be able to differentiate plans from one another.

Response: Based on the comments received, we agree that one material difference (that is, plan type of HMO vs. PPO) would have a large enough impact for consumers to be able to differentiate plans from one another, which satisfies our policy goal of ensuring the ability to readily differentiate and compare plan choices, leading to informed decisions. Accordingly, we are finalizing the standard at § 156.298(b) with a modification from two material differences to one.

Comment: Several commenters opposed the inclusion of premiums as a material difference among the key characteristics at the proposed § 156.298(b)(5), to use when determining if the meaningful difference standard is met. Specifically, commenters noted that premiums alone are not indicators of difference in plan design, but rather a function of plan design difference that are already accounted for in the other characteristics included in the proposed list.

Response: We agree based on the strong feedback from commenters that premiums alone are not indicators of difference in plan design, Therefore, we have revised § 156.298(b) so that premium is no longer included as a material difference option. We have renumbered the remaining characteristics accordingly.

Comment: Commenters expressed concern over the vague descriptions of the characteristics associated with the proposed standard and requested more robust quantitative standards for issuers to follow for the 2015 benefit year. For instance, several commenters requested further guidance on the cost-sharing characteristic.

Response: While we understand the reasoning for having more robust quantitative standards, we are not adding more robust quantitative standards to the characteristics because we believe that the characteristics are generally sufficiently detailed for issuers to be able to design QHPs that would be meaningfully different under this standard.

Comment: Some commenters expressed concern with the limited plan availability exception proposed at § 156.298(c). Commenters stated that they believed this exception may lead to cherry-picking of particular counties by issuers and anti-competitive practices to saturate the market.

Response: This policy helps to ensure that consumers have adequate plan choice in every county within the marketplace. We are finalizing this provision of the proposed policy as written.

Comment: Several commenters agreed with the approach of limiting an issuer's participation in the FFEs should there be significantly different rate increases for its QHPs and non-QHPs, based on the Exchange's authority under sections 1311(e)(1) and (e)(2) of the Affordable Care Act. Moreover, commenters thought that it is important for HHS to take sufficient action to ensure that a given plan in the FFE is in the interest of qualified individuals and qualified employees. Conversely, other commenters opposed the proposed policy as they noted that numerous components of the Affordable Care Act that mitigate adverse selection between QHP and non-QHPs already exist, so there is no need for HHS to impose a new protection for the FFEs.

Response: We appreciate all the feedback and comments regarding o the proposed approach. We are not finalizing any new policy related to limiting participation in the FFEs on this basis and will take this feedback into consideration for future rulemaking.

7. Quality Standards: Establishment of Patient Safety Standards for QHP Issuers

In § 156.1110, we proposed that during phase one, a QHP issuer that contracts with hospitals that have more than 50 beds, must verify that they are Medicare-certified or have been issued a Medicaid-only CMS certification number (CCN), and are subject to Medicare Hospital Conditions of Participation (CoPs) requirements found in 42 CFR part 482 (specifically, standards regarding a quality assessment and performance improvement program and a discharge planning process). We proposed to direct QHP issuers to maintain documentation, including but not limited to the CCN for each hospital, to demonstrate compliance. We further proposed that a QHP issuer must make this documentation available to the Exchange, upon request by the Exchange, and in a time and manner specified by the Exchange. Lastly, we proposed that a QHP issuer must ensure that each of its QHPs meet these initial patient safety standards for plan or policy years beginning on or after January 1, 2015. Additional patient safety standards for QHP issuers would be implemented over time, under the Secretary's authority under section 1311(h)(2) of the Affordable Care Act. We noted that we anticipate establishing phase two implementation which would begin January 1, 2017 or when we issue further regulations based on a reassessment of the Exchange market, whichever is later, to include standards around hospitals and Patient Safety Organizations (PSO), health care providers, and health care quality improvement mechanisms. We noted that implementing all of the requirements described in section

1311(h) by January 1, 2015, could result in a shortage of qualified hospitals and providers available for contracting with QHPs.

We are finalizing this approach as proposed with one modification. We are modifying the documentation standard in § 156.1110(b) to remove "including, but not limited to, the CCN," to indicate that only the CCN is required to be collected.

Comment: Many commenters agreed with the proposed provisions that we outlined in the proposed rule and supported the use of Medicare Hospital CoPs requirements in the initial phase of implementation of patient safety standards. Many commenters also expressed support for the phase-in approach to implementing the patient safety reporting standards for QHP issuers. They stated that the proposed approach was reasonable to ensure adequate numbers of hospitals in QHP networks and to safeguard patient access to health care services. Commenters agreed with HHS's rationale that currently, there is insufficient capacity of Patient Safety Organizations (PSOs) and expressed concern that any more stringent standards than what was proposed would have negative effects on patient access and breadth of networks.

Response: We are finalizing the regulation as proposed with one minor change to the documentation standard, as discussed above. By finalizing as proposed, we believe that this approach to implementation of section 1311(h) would ensure that QHP issuers have sufficient hospitals and health care providers to contract with, while providing consumers with access to health care that meets adequate safety and quality standards.

Comment: Several commenters did not support the delay of the QHP issuer requirement of ensuring contracted hospitals have agreements with PSOs and disagreed with the proposed length of the phase-in period. These commenters disagreed regarding constraints for hospitals to enter into agreements with PSOs and for issuers to track such information. One commenter stated that Medicare Hospital CoPs requirements are not a proper substitute for hospital PSO relationships. Other commenters requested that CMS ensure that the phase-in lasts no more than one year as patient safety reporting is important to inform consumer choice and for health system improvement.

Response: We believe that the proposed phase-in for standards will ensure that QHP issuers and their contracted hospitals demonstrate the implementation of patient safety activities while allowing time to develop more robust standards. We believe that establishing standards requiring hospital agreements with PSOs would be overly burdensome and an inefficient use of resources for the majority of hospitals and QHP issuers at this time. We believe it is important for hospitals to take adequate time to assess their unique patient safety data collection and analysis needs and to establish agreements with the appropriate PSOs. Further, we believe the proposed approach allows QHP issuers the opportunity to monitor patient safety of their network hospitals for meaningful compliance with patient safety standards. As the Exchange market evolves and as enrollment increases, we believe that patient safety reporting standards for QHP issuers should be enhanced. We do not intend phase one standards to be a substitute for hospital and PSO agreements. We believe that the first phase of implementation and aligning with Medicare Hospital CoPs requirements is appropriate at this time because the approach allows for effective alignment of hospital quality standards, clear standards for issuers and hospitals, and sufficient patient access to health care, in time to meet the statutory deadline of January 1, 2015.

Comment: A few commenters expressed concerns that the proposed rule fails to acknowledge successes of PSOs and participating providers and potentially has a negative impact on the progress in patient safety. Some commenters stated that those hospitals participating in PSO programs should be differentiated or rewarded using a preferred quality provider designation.

Response: We acknowledge that there are many successful, existing patient safety initiatives among health care providers across the country, including work by PSOs. In addition, we continue to encourage robust QHP provider networks that promote access to quality health care services. We believe the standards in the proposed rule support existing patient safety initiatives by providing a balanced approach to minimize potential duplication of hospital quality standards and ensure that individuals have the necessary access to health care. We recognize that many hospitals already have established agreements with PSOs but we do not believe it is necessary to require such agreements of hospitals at this time. We do not intend to restrict hospitals and QHP issuers from including such information in their marketing materials if they choose to.

Comment: One commenter supported the proposed approach as integrated delivery systems are not able to follow the requirements of the Patient Safety Quality Improvement Act (PSQIA) which create barriers to the free flow of information between providers and the integrated health plan issuer of a QHP. One commenter was concerned with regard to the integrated system's ability to participate in PSOs and encouraged the development of a reasonable alternative.

Response: We understand the commenter's concern of the unique challenges of an integrated health care delivery system to participate in the Federal PSO program established under the PSQIA. As we state in the preamble to this final rule, we intend to issue future rulemaking regarding the establishment of reasonable exceptions pursuant to the Secretary's authority in section 1311(h)(2) of the Affordable Care Act and will welcome additional comments at that time.

Comment: A few commenters were concerned that the proposed standards require QHP issuers to contract only with Medicare-certified hospitals and would therefore have a negative effect on patient access and breadth of networks. Specifically, commenters requested clarification that the standards only applied to Medicare-certified hospitals and would not restrict contracting with non-Medicare hospitals. They also asked for clarity that the standards did not apply to hospitals that may be temporarily without CCNs.

Response: We are clarifying that the standards do not require QHP issuers to only contract with Medicare-certified hospitals. As we stated in the proposed rule, the standards are designed to not significantly limit hospital participation in QHP networks and as proposed, would prevent a potential shortage of qualified hospitals and providers available for contracting with QHPs. The proposed standards in § 156.1110 establishes that a QHP issuer that contracts with a hospital with greater than 50 beds must verify that the hospital is Medicare-certified or has been issued a Medicaid-only CCN. However, QHP issuers are not prevented from contracting with other types of hospitals and providers.

Comment: One commenter cautioned CMS against implementing duplicative standards on hospitals and noted the hospital value-based purchasing programs and other quality reporting requirements included in the Affordable Care Act as potential areas for alignment. A few commenters made suggestions as to alignment of hospital standards across Medicare, Medicaid, and commercial markets.

Response: We believe the proposed standards to align with Medicare Hospital CoPs requirements for Quality Assurance and Performance Improvement programs and discharge planning in the initial years of implementation minimizes duplication and we intend to continue efforts to align with existing and effective Federal, State, and private health care quality reporting initiatives as well as other quality reporting requirements in the Affordable Care Act to minimize duplication. Comments regarding programs other than Exchanges and QHP issuers (such as hospital value-based purchasing programs) are outside the scope of this final rule.

Comment: One commenter urged CMS to establish standards, or at the least a framework, for 1311(g), related to quality improvement strategy reporting by QHP issuers, before implementing the second phase of section 1311(h) of the Affordable Care Act. The commenter stated that it is inappropriate to request issuers to comment on the future phase without providing standards for 1311(g) of the Affordable Care Act.

Response: We understand the commenter's concern of establishing standards regarding QHP quality improvement strategies in accordance with section 1311(g) of the Affordable Care Act prior to the future phase of implementation of patient safety standards. We intend to issue rulemaking in the future and will welcome comments to inform implementation of 1311(g) at that time. We agree with the commenter regarding the importance of harmonization of quality and patient safety reporting standards for QHP issuers.

Comment: One commenter suggested that phase one implementation of the standards should require hospitals to undergo an external evaluation by expert surveyors similar to the Medicare requirement for accredited hospitals.

Response: We believe that the proposed standards are adequate for phase one implementation of patient safety reporting for QHP issuers without placing undue burden on issuers or hospitals. We do not intend to duplicate standards for hospital survey and certification processes already in place and we also do not intend to interfere with hospital accreditation processes.

Comment: Many commenters supported the proposal to apply the patient safety reporting requirements to hospitals with more than 50 beds.

Response: We are finalizing the statutory distinction of number of hospital beds to be greater than 50 beds as proposed.

Comment: One commenter requested CMS to clarify what it considers to be a section 1861(e) hospital, including the types of hospitals. The commenter requested confirmation of their understanding that CMS intends for this provision to apply only to hospitals that are subject to the CoPs standards for Quality Assurance and Performance Improvement programs and discharge planning, which is broader than general acute care hospitals. Some commenters expressed concern that the proposed standards do not apply to hospitals with fewer beds, children's hospitals, critical access hospitals, inpatient psychiatric facilities or other hospitals that do not participate in Medicare or Medicaid.

Response: Section 1861(e) of the Social Security Act refers to the definition of the term, hospital. We clarify that the hospitals that are included in these proposed standards are those that are subject to the Medicare Hospital CoPs and that are Medicare-certified or are Medicaid-only hospitals that have CCNs. QHP issuers may continue to contract with other types of hospitals or providers that are not included in this reference; however, the issuer would not have to maintain the associated hospital CCNs based on these standards. For example, although we do not specifically identify psychiatric hospitals that are defined by 1861(f) of the Social Security Act, the proposed standards do not prevent QHP issuers from contracting with such hospitals. QHP issuers would not be required to collect and maintain CCNs for such hospitals in accordance with § 156.1110 but again, would be able to continue to contract with such hospitals. We encourage all hospitals and health care providers to engage in patient safety improvement activities with the goal of reducing harm and achieving better patient health outcomes. In the second phase of implementation, we will assess the feasibility of applying future patient safety reporting standards to other types of hospitals and will solicit comment at that time.

Comment: Several commenters did not support the proposed methodology for collecting and documenting a hospital's CCN as it could be burdensome to QHP issuers. Several other commenters offered suggestions for different methods that HHS could use, including having HHS collect the information from a hospital's accrediting entity or using publicly available data, such as Medicare's Provider of Services file. Another commenter asked that we specify what other documentation may be required in addition to a hospital's CCN.

Response: We acknowledge that there may be other sources for collecting a hospital's CCN; however, we believe that the QHP issuer should have the responsibility of tracking their contracted hospitals adherence to the standards we have proposed. In the final rule, we are modifying the documentation standard to direct QHP issuers to maintain only the CCNs for each hospital that these standards apply to. We maintain the collection and reporting of CCNs but we have removed reference to any other documentation.

Comment: One commenter seeks clarification that QHP issuers meet the documentation requirements for Medicare-certified or Medicaid-only CCN hospitals simply by providing Exchanges proof of those hospitals' certification or CCN, as provided to the QHP by the contracted hospital.

Response: We clarify that the QHP issuer would meet the documentation standard by providing the Exchange, upon request by the Exchange, the applicable hospitals' CCNs as provided by the contracted hospitals. We also clarify that it is the responsibility of the QHP issuer to ensure that accurate CCN information is maintained.

Comment: Several commenters disagreed with the proposed length of the phase-in period and requested that HHS ensure that the phase-in lasts no more than one year as patient safety reporting is important to inform consumer choice and for health system improvement. Another commenter requested that the phase-in period be shortened to one year.

Response: We maintain that the first phase of implementation would be for 2 years beginning January 1, 2015 or until we issue further regulations based on a reassessment of the Exchange market, whichever is later. We believe that this provides ample time for Exchange markets to develop, QHP provider networks to grow, PSOs to continue expanding, continued research regarding more robust patient safety standards for QHP issuers and examples of comparable activities to be included as reasonable exceptions.

Comment: Several commenters provided detailed suggestions for implementing the future phase of patient safety reporting standards including reasonable exceptions to the requirements and a number of comments regarding the core aspects of a hospital patient safety program, discharge planning program, health care quality improvement activities, and how QHPs can effectively track patient safety activities. Some commenters requested additional details regarding phase two

to be provided now so that stakeholders may have time to prepare.

Response: We intend to promulgate future rulemaking outlining a proposed approach and will seek additional public comment at that time.

8. Financial Programs

a. Netting of Payments and Charges

In the 2014 Payment Notice, HHS established a monthly payment and collections cycle for the advance payments of the premium tax credit, cost-sharing reductions, and FFE user fees, and an annual payment and collections cycle for the premium stabilization programs and reconciliation of cost-sharing reductions. For 2014, to streamline our payments and collections process, we provided in § 156.1215(a) that each month HHS will determine amounts owed to or by a QHP issuer by netting amounts owed by the QHP issuer to the Federal government against payments due to the QHP issuer for advance payments of the premium tax credit, advance payments of cost-sharing reductions, and payment of FFE user fees. In addition to this netting across these programs, as further described below, the monthly calculation of amounts due will reflect current information related to enrollment for past months, including information related to excess payments previously made. Finally, amounts owed to or by a QHP issuer will be netted across all entities operating under the same taxpayer identification number (TIN). This process will permit HHS to calculate amounts owed each month, and pay or collect those amounts from issuers more efficiently. When netting occurs, HHS will demand amounts due only when there is a net balance due to the Federal government.

Additionally, a number of annual payment flows will begin in 2015 for the risk adjustment program, the reinsurance program, the risk corridors program, and cost-sharing reduction reconciliation. To streamline payment and charge flows from all of these programs—advance payments of the premium tax credit, advance payments and reconciliation of cost-sharing reductions, FFE user fees, and the premium stabilization programs—we proposed in § 156.1215(b) that HHS may net amounts owed to the Federal government against payments due to an issuer (or an affiliated issuer under the same TIN) under these programs in 2015 and later years. We believe that this process will enable HHS to operate a monthly payment cycle that will be efficient for both issuers and HHS.

In § 156.1215(c), we proposed that any amount owed to the Federal government by an issuer and its affiliates for advance payments of the premium tax credit, advance payments of and reconciliation of cost-sharing reductions, FFE user fees, risk adjustment, reinsurance, and risk corridors after netting be the basis for calculating a debt owed to the Federal government. We proposed that payments and collections under all of these programs occur under an integrated monthly payment and collection cycle.

After considering the comments received, we are finalizing these provisions as proposed.

Comment: We received several comments supporting the proposed netting provisions in § 156.1215. However, one commenter asked HHS to net in a rolling fashion every month, and wait until the end of the calendar year to invoice issuers for any remaining balance.

Response: We believe that issuers should pay amounts owed on a monthly basis. Under our debt collection rules, these amounts owed could begin to accrue interest and penalties in subsequent months.

Comment: In response to our request for comment on payment timeframes, some commenters asked HHS to amend § 156.1210 in order to give issuers 15 business days, rather than 15 calendar days, to file discrepancy reports.

Response: The 15-calendar-day deadline established in § 156.1210 is necessary to permit HHS to resolve discrepancies by the next month's payment and collection process. Under § 156.1210(b), HHS will work with issuers that report discrepancies after 15 calendar days as long as the late reporting is not due to misconduct on the part of the issuer.

b. Confirmation of HHS Payment and Collections Reports

Under § 156.1210(a), an issuer must respond to the payment and collections report issued by HHS within 15 calendar days of receipt of the report by either confirming the report or notifying HHS if there is a discrepancy between the data provided in the payment and collections report and the data that the issuer has. Under § 156.1210(b), if an issuer reports a discrepancy in a payment and collections report later than 15 calendar days after receipt of the report, HHS will work with the issuer to resolve the discrepancy as long as the late reporting was not due to misconduct on the part of the issuer. Any resolution to such an identified discrepancy is reflected in a later payment and collections report and the invoice generated under that later report does not affect the debt established by the invoice generated in connection with the earlier report.

We proposed that if an issuer notifies HHS of a discrepancy under § 156.1210(a) or (b), it would trigger an administrative discrepancy resolution process. Specifically, under § 156.1220(a), following the end of the benefit year, if the issuer remains dissatisfied with the results of that process, the issuer may make a request for reconsideration. To decrease the administrative burden on issuers, HHS, and the Exchanges, and in recognition of the number and timing of the data flows involved, we proposed not to retroactively adjust previous months' payment and collections reports and amounts previously due. The amount invoiced for a particular month, reflecting netted amounts as described above, constitutes an amount owed to the Federal government. As more accurate data become available to HHS, the Exchange, and the issuer, we proposed that this later information not reduce or increase the previous determination of an amount owed. Rather, the information is captured in subsequent months and reflected in subsequent payment cycles, and reflected in later invoices. Thus, an issuer would be required to pay the full amount of any invoice issued in connection with a payment and collection report for a month even if the issuer notes a discrepancy that may later be resolved as a credit in a later invoice. Therefore, we proposed to add paragraph (c) to § 156.1210 to provide that discrepancies in payment and collections reports identified to HHS under that section be addressed in subsequent payment and collections reports, and would not be used to change debts determined pursuant to invoices generated under previous payment and collections reports.

After considering comments on this approach, we are finalizing these provisions as proposed.

Comment: One commenter supported our proposal not to retroactively adjust HIX 820 payment and collections reports and amounts previously due. Another commenter asked HHS to amend proposed § 156.1215 to specify that HHS will delineate payments and charges by program and by issuer, so that issuers can track HHS netting, keep accurate track of payments by programs, and avoid penalties and fines for late payments.

Response: The HHS monthly payment and collections report will detail charges, payments, and netting by

program for each payee group. Each payee group consists of one or more issuers with the same TIN and is established and organized by a parent health insurer. In addition to this monthly statement, HHS anticipates providing issuers with more detailed reports relating to certain programs.

Comment: One commenter asked when HHS will make payments to issuers for reinsurance, risk adjustment, and cost-sharing reduction reconciliation.

Response: We will issue guidance on the timing of these payments in the future.

c. Administrative Appeals

In the proposed rule, we proposed an administrative appeals process designed to address unresolved discrepancies in advance payments of the premium tax credit, advance payments of cost-sharing reductions, FFE user fee payments, payments and charges for the premium stabilization programs, cost-sharing reduction reconciliation payments and charges, and assessments of default risk adjustment charges.

In § 156.1220(a), we proposed that an issuer be permitted to file a request for reconsideration of a processing error by HHS,[54] HHS's incorrect application of the relevant methodology, or HHS's mathematical error only with respect to: (1) Advance payments of the premium tax credit, advance payment of cost-sharing reductions and FFE user fee charges; (2) risk adjustment payments or charges for a benefit year, including an assessment of risk adjustment user fees; (3) reinsurance payments for a benefit year; (4) a risk adjustment default charge for a benefit year; (5) a reconciliation payment or charge for cost-sharing reductions for a benefit year; or (6) risk corridors payments or charges for a benefit year. For a dispute regarding advance payments of the premium tax credit, advance payments of cost-sharing reductions, or FFE user fee amounts for a benefit year, we proposed that a request for reconsideration be required to be filed within 30 calendar days after the issuer receives a final reconsideration notification specifying the aggregate amount of advance payments of the premium tax credit, advance payments of cost-sharing reductions, and FFE user fees for the applicable benefit year. We sought comment on this proposal, including on the minimum materiality threshold that should be required for an issuer to seek reconsideration.

For a dispute regarding a risk adjustment payment or charge, including an assessment of risk adjustment user fees, a reinsurance payment, a default risk adjustment charge, a cost-sharing reduction reconciliation payment or charge, or a risk corridors payment or charge, we proposed that a request for reconsideration be filed within 30 calendar days of receipt of the applicable notification of payments and charges from HHS.

In proposed § 156.1220(a)(3)(i) (§ 156.1220(a)(4)(i) in this final rule), we proposed that the request for reconsideration specify the findings or issues that the issuer challenges, and the reasons for the challenge. In proposed § 156.1220(a)(3)(ii) (§ 156.1220(a)(4)(ii) in this final rule), we proposed that a reconsideration with respect to a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error be permitted to be requested only if, to the extent the issue could have been previously identified by the issuer to HHS under § 153.710(d)(2) or (e)(2), it was so identified and remains unresolved. Similarly, in proposed § 156.1220(a)(3)(iii) (§ 156.1220(a)(4)(iii) in this final rule), we proposed that a reconsideration with respect to advance payments of the premium tax credit, advance payments of cost-sharing reductions, and FFE user fees be permitted to be requested only if, to the extent the issue could have been previously identified by the issuer to HHS under § 156.1210, it was so identified and remains unresolved. We proposed that an issuer be permitted to request reconsideration if it previously identified an issue under § 156.1210 after the 15-calendar-day deadline, but that the issuer's late discovery of the issue was not due to misconduct on the part of the issuer.

In § 156.1220(a)(3)(iv) (§ 156.1220(a)(4)(iv) in this final rule), we proposed that the issuer be permitted to include in the request for reconsideration additional documentary evidence that HHS should consider. Such documents could not include data that was to have been filed by the applicable data submission deadline, but could include evidence of the timely submission of such documents.

In § 156.1220(a)(4) (§ 156.1220(a)(5) in this final rule), we proposed that in conducting the reconsideration, HHS would review the payment determination, the evidence and findings upon which it was based, and any additional documentary evidence submitted by the issuer. HHS would also have the discretion to review any other evidence it believes is relevant in deciding the reconsideration (and would provide the issuer a reasonable opportunity to review and rebut the evidence), and would then inform the issuer of the final decision in writing. We proposed that an issuer would be required to prove its case by a preponderance of the evidence with respect to issues of fact.

In § 156.1220(a)(5) (§ 156.1220(a)(6) in this final rule), we proposed that a reconsideration decision would be final and binding for decisions regarding the advance payments of the premium tax credit, advance payments of cost-sharing reductions, and FFE user fees. A reconsideration with respect to other matters would be subject to the outcome of a request for informal hearing filed in accordance with proposed § 156.1220(b). We proposed in § 156.1220(b) that an issuer that elects to challenge the reconsideration decision for the final risk adjustment payment or charge, including an assessment of risk adjustment user fees; reinsurance payment; default risk adjustment charge; cost-sharing reduction reconciliation payment or charge; or risk corridors payment or charge for a benefit year provided under paragraph (a) of § 156.1220 would be entitled to an informal hearing before a CMS hearing officer. In § 156.1220(b)(1), we proposed that a request for an informal hearing be made in writing and filed with HHS within 15 calendar days of the date the issuer receives the reconsideration decision. In § 156.1220(b)(2), we proposed that the request for an informal hearing be required to include a copy of the reconsideration decision and specify the findings or issues in the decision that the issuer is challenging and its reasons for the challenge. We also proposed that HHS be permitted to submit for review by the CMS hearing officer a statement of the reasons supporting the reconsideration decision.

In § 156.1220(b)(3)(i), we proposed that the issuer would receive a written notice of the time and place of the informal hearing at least 15 calendar days before the scheduled date. In § 156.1220(b)(3)(ii), we proposed that the CMS hearing officer would neither receive testimony nor accept any new evidence that was not presented with the reconsideration request or in any statement provided by HHS. The scope of the CMS hearing officer's review would be limited to the statements provided by the issuer and HHS and the

[54] A processing error could result from HHS accessing the data submitted by the issuer on the dedicated distributed data environment in an incomplete or incorrect manner. We note that under proposed § 156.1220(a)(4)(i)–(ii), an issuer may not submit new data for consideration in an appeal if the data was not submitted prior to the applicable data submission deadline, but may submit documentary evidence to support a contention that data was timely submitted.

record that was before HHS in making the reconsideration determination. We would require that the issuer prove its case by clear and convincing evidence with respect to issues of fact and would permit the issuer to be represented by counsel in the informal hearing.

In § 156.1220(b)(4), we proposed that, following the informal hearing, the CMS hearing officer send the decision and the reasons for the decision to the issuer. We proposed that this decision be final and binding, but subject to any Administrator's review initiated in accordance with proposed § 156.1220(c).

We proposed in § 156.1220(c)(1) that if the CMS hearing officer upholds the reconsideration decision, the issuer be permitted to request a review by the Administrator of CMS within 15 calendar days of receipt of the CMS hearing officer's decision.[55] The request for a review by the Administrator of CMS would be required to specify the findings or issues in the decision that the issuer is challenging, and the reasons for the challenge. We proposed that HHS be permitted to submit for review by the Administrator of CMS a statement supporting the decision of the CMS hearing officer.

In § 156.1220(c)(2), we proposed that the Administrator of CMS or a delegate review the hearing officer's decision, any written documents submitted by HHS or the issuer, as well as any other information included in the record of the CMS hearing officer's decision, and determine whether to uphold, reverse, or modify the CMS hearing officer's decision. We proposed that the issuer be required to prove its case by clear and convincing evidence with respect to issues of fact. We proposed that the Administrator's determination be considered final and binding.

In response to comments, we are finalizing these provisions with the following modifications: We are extending the deadline to file a request for reconsideration to 60 calendar days instead of 30 calendar days, and the deadline for filing an informal hearing to 30 calendar days instead of 15 calendar days. We are also providing that these deadlines will run from the date of issuance of the notification and reconsideration decision, rather than the date an issuer receives the notification or reconsideration decision. Finally, we are providing that an issuer has 15 calendar days to request review by the Administrator from the date of the CMS hearing officer decision, rather than from the date of receipt of the decision.

We are also providing for a minimum materiality threshold that an issuer must meet in order to request reconsideration for (1) advance payments of the premium tax credit, advance payments of cost-sharing reductions, or Federally-facilitated Exchange user fees (2) risk adjustment payment or charges (3) reinsurance payments (4) risk adjustment default charges (5) reconciliation payments or charges for cost-sharing reductions and (6) risk corridors payments or charges. That threshold is equal to the lesser of 1 percent of the applicable payment or charge listed in the prior enumerated categories payable to or due from the issuer for a benefit year, or $10,000. For example, an issuer that received $75,000 in advance payments of cost-sharing reductions would need to seek reconsideration of at least $7,500 in those advance payments to meet the minimum materiality threshold, and an issuer that received $800,000 in reinsurance payments would need to seek reconsideration of at least $10,000 in reinsurance payments.

Comment: Several comments supported the proposed administrative appeals process. Some commenters asked that HHS allow issuers to appeal reconsideration decisions regarding advance payments of the premium tax credit, cost-sharing reductions, and FFE user fees.

Response: Issuers can dispute advance payments of the premium tax credit, advance payments of cost-sharing reductions, and FFE user fees amount on a monthly basis through the discrepancy report process set forth in § 153.1210, prior to receiving the final reconsideration notice in the summer of the year following the applicable benefit year. Furthermore, the methodology for calculating these payments provides few factors on which a request for reconsideration may be made. Given these considerations, we believe that providing one level of administrative appeal for advance payments of the premium tax credit, advance payments of cost-sharing reductions, and FFE user fees will provide issuers ample opportunity to resolve any discrepancies.

Comment: Several commenters sought extensions in the proposed timeframe for filing an appeal. Commenters asked that issuers have 60 calendar days to file a request for reconsideration, rather than 30 calendar days. The commenters also asked that issuers have 30 calendar days, rather than 15 calendar days to file a request for an informal hearing.

Response: We appreciate the need for additional time to analyze final notifications, and are amending § 156.1220(a)(2) to allow issuers 60 calendar days to file a request for reconsideration and § 156.1220(b)(1) to allow issuers 30 calendar days to request an informal hearing before a CMS hearing officer. In order to reduce the scope for disputes on when notifications are received, we are also amending our proposed policies to clarify that these timeframes will begin at the date of issuance of the notification and reconsideration decision rather than the date an issuer receives the notification or reconsideration decision.

Comment: Several commenters supported a minimum materiality threshold that should be required to seek reconsideration. One commenter suggested a minimum threshold of 1 percent of total payments made to or charges assessed on the issuer for a benefit year, while other commenters supported a materiality threshold equal to the lesser of 1 percent of total payments made to or charges assessed on the issuer for a benefit year, or $10,000.

Response: We are amending our proposed rule to set a minimum materiality threshold for an issuer to request reconsideration under § 156.1220(a)(1) for (1) advance payments of the premium tax credit, advance payments of cost-sharing reductions, or FFE user fees; (2) risk adjustment payment or charges; (3) reinsurance payments; (4) risk adjustment default charges; (5) reconciliation payments or charges for cost-sharing reductions; and (6) risk corridors payments or charges only if the amount in dispute is equal to or exceeds 1 percent of the applicable payment or charge payable to or due from the issuer for the benefit year, or $10,000, whichever is less. We are adopting a per-category calculation rather than an overall calculation because we do not believe the threshold should be artificially low if the issuer happens to have balancing payments and charges across the various programs.

Comment: Commenters asked that HHS provide detailed guidance on how to reflect amounts subject to reconsiderations and appeals in MLR filings.

Response: We are finalizing § 153.710(g), which provides details on how amounts subject to administrative appeals process should be reported for the purposes of MLR and risk corridors. Issuers must report, for the purposes of risk corridors and MLR, the risk adjustment or reinsurance payment to

[55] Consistent with the Medicare Advantage risk adjustment data validation audit dispute and appeal processes set forth in 42 CFR 422.311, we intend to propose in future rulemaking that CMS may also request review by the Administrator of a CMS hearing officer's decision.

be made by the Federal government, or the risk adjustment charge assessed by the Federal government, as reflected in the June 30th report, regardless of the amount in dispute. A QHP issuer would be required to report a cost-sharing reduction amount equal to the amount of the advance payments of cost-sharing reductions paid to the issuer by HHS for the benefit year, as reflected in the HHS report on cost-sharing reduction reconciliation payments and charges. Additionally, if a QHP issuer requests reconsideration of risk corridors payments or charges, then for purposes of MLR reporting, the QHP issuer would be required to report the risk corridors payment to be made to the Federal government or charge assessed by the Federal government as reflected in the notification provided under § 153.510(d). As stated in § 153.710(g)(2), an issuer must report any adjustment made following any discrepancy report made under paragraphs (d)(2) or (e)(2), or any request for reconsideration under § 156.1220(a) with respect to any risk adjustment payment or charge, including an assessment of risk adjustment user fees, reinsurance payment, cost-sharing reconciliation payment or charge, or risk corridors payment or charge, or following any audit, where the adjustment has not been accounted for in a prior risk corridors or MLR report, in the next following risk corridors and MLR report.

IV. Provisions of the Final Regulations

For the most part, this final rule incorporates the provisions of the proposed rule. Those provisions of this final rule that differ from the proposed rule are as follows:

1. Part 144—Requirements Relating to Health Insurance Coverage

We are finalizing the amendment to the definition of "policy year" for student health insurance coverage with a minor revision to remove the word "individual" from the reference to "individual health insurance coverage."

2. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

We are restructuring § 147.102(c)(3) as paragraphs (c)(3)(i) through (iii).

We are amending new § 147.102(c)(3)(ii) to provide that an issuer offering composite premiums is subject to the standards of new paragraph (c)(3)(iii), and to specify that the requirement that the total group premium must equal that the sum of per-member premiums is determined at the time of applicable enrollment at the beginning of the plan year.

We are amending new § 147.102(c)(3)(iii) to provide that the standards in this paragraph apply in connection with a group health plan in the small group market.

We are amending new § 147.102(c)(3)(iii)(A) to clarify that composite premiums are calculated based on applicable enrollment of "participants and beneficiaries" at the beginning of the plan year, and deleting references to participants and beneficiaries elsewhere in this paragraph.

We are adding new § 147.102(c)(3)(iii)(B) to establish a two-tiered composite premium structure for small group market issuers that offer composite premiums. States may establish an alternate tiered-composite methodology with approval from HHS.

We are adding new § 147.102(c)(3)(iii)(C) to provide that an issuer cannot include any rating variation for tobacco use in a composite premium but instead must apply any applicable tobacco rating factor on a per-member basis, pursuant to applicable State law.

We are adding new § 147.102(c)(3)(iii)(D) to provide that issuers offering composite premiums with respect to a particular product offered in the small group market in a State must do so uniformly for all group health plans enrolling in that product, giving those group health plans the option to pay premiums based on a composite premium methodology, to the extent permitted by applicable State law and subject to § 156.285(c) of this final rule (prohibiting composite premiums in connection with employee choice in the FF–SHOPs).

3. Part 153—Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment Under the Affordable Care Act

a. Provisions and Parameters for the Permanent Risk Adjustment Program

We are amending § 153.630(b)(1) to provide that the issuer must attest that it has no conflicts of interest with the initial validation auditor to its knowledge, following reasonable investigation, and must attest that it has obtained an equivalent representation from the initial validation auditor.

We are amending § 153.630(b)(7)(i) to provide that an enrollee's risk score must be validated by enrollment and demographic data review in a manner to be determined by HHS.

We are amending § 153.630(b)(7)(iv) to provide that, for the initial years of risk adjustment data validation (the 2014 and 2015 benefit years), the senior reviewer may possess 3 or more years of experience.

We are amending § 153.630(b)(8) to provide that, for the initial years of risk adjustment data validation (the 2014 and 2015 benefit years), the initial validation auditor may meet an inter-rater reliability standard of 85 percent for validating review outcomes in accordance with the standards established by HHS.

b. Provisions and Parameters for the Transitional Reinsurance Program

We are amending the definition of "contributing entity" in § 153.20 to mean, for the 2015 and 2016 benefit years, a health insurance issuer and a self-insured group health plan (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage) that uses a TPA in connection with claims processing or adjudication (including the management of internal appeals) or plan enrollment for services other than for pharmacy benefits or excepted benefits within the meaning of section 2791(c) of the PHS Act. Notwithstanding the foregoing, a self-insured group health plan that uses an unrelated third party to obtain provider network and related claim repricing services, or uses an unrelated third party for up to 5 percent of claims processing or adjudication or plan enrollment for services other than for pharmacy or excepted benefits, will not be deemed to use a TPA, based on either the number of transactions processed by the third party, or the volume of the claims processing and adjudication and plan enrollment services provided by the third party.

We are amending the definition of "major medical coverage" in § 153.20 to include any catastrophic plan, or individual or small group market coverage subject to actuarial value requirements under § 156.140.

We are not finalizing our proposal to delete and reserve § 153.235(b).

c. Provisions for the Temporary Risk Corridors Program

We are adding a definition of "adjustment percentage" to § 153.500, and are amending the definitions of "profits" and "allowable administrative costs" in § 153.500 to account for the adjusted amount.

We are adding a definition of "transitional State" to § 153.500.

We are making a conforming change to § 153.530(d) to clarify that the July 31 submission deadline for risk corridors

data does not apply to the enrollment data specified in § 153.530(e).

We are adding paragraph (e) to § 153.530 to require health insurance issuers in the individual and small group markets to submit enrollment data for the risk corridors adjustment.

We are not finalizing our proposal in § 153.540 to establish our authority to assess CMPs for failure of an issuer to comply with applicable risk corridors rules.

4. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

a. Annual Open Enrollment Period for 2015

For consistency within this section, we are modifying § 155.410(f)(1) to refer to "QHPs" instead of "plans," we are amending § 155.410(f)(1)(ii) to correct a typographical error referring to December 16, 2015 instead of 2014, we are amending § 155.410(e)(1) to change the close of the open enrollment period for 2015 to February 15, 2015, and we are amending § 155.410(f)(1)(iii) to provide for the applicable coverage effective dates for enrollments between January 16 and 31, 2015. We are not finalizing § 155.410(e)(2) or § 155.410(f)(2), as proposed.

b. Functions of a Small Business Health Options Program

We are modifying § 155.705(b)(3)(v)(B), which now allows an employer to choose to make available all stand-alone dental plans offered through an FF–SHOP at a level of coverage as described in § 156.150(b)(2).

We are finalizing amendments to § 155.705(b)(6) that were originally proposed in the Program Integrity proposed rule. We are finalizing language proposed at § 155.705(b)(6)(ii) at § 155.705(b)(6)(i)(A) instead of at (b)(6)(ii), to make clear that we never intended for this proposal to supersede the language at current § 155.705(b)(6)(ii), and are making a minor change to replace the word FF–SHOP with the term "Federally-facilitated SHOP.

We added a heading to § 155.220(i).

We are not finalizing the proposed amendment to § 155.705(b)(11)(ii)(D).

5. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

a. Provisions Related to Cost Sharing

We clarify in § 156.420(d) that the out-of-pocket spending required of enrollees in the zero cost sharing plan variation of a QHP for a benefit that is not an essential health benefit from a provider (including a provider outside the plan's network) may not exceed the corresponding out-of-pocket spending required in the limited cost sharing plan variation of the QHP and the corresponding out-of-pocket spending required in the silver plan variation of the QHP for individuals eligible for cost-sharing reductions under § 155.305(g)(2)(i), in the case of a silver QHP.

b. National Annual Limit on Cost Sharing for Stand-Alone Dental Plans in an Exchange

We are finalizing the annual limit on cost sharing with an increase compared to the proposed levels, to apply to SADPs certified by all Exchanges nationally.

We are not finalizing our proposal to delete the actuarial value requirement at § 156.150(b).

c. Additional Standards Specific to SHOP

We have modified § 156.285(a)(4)(i) to add the words "being sold through the SHOP" to provide clarity to the regulation text finalized at § 156.285(a)(4)(i).

We have modified § 156.285(a)(4)(ii) to provide that the policy expressed in that provision also applies to SADPs in the Federally-facilitated SHOP, if the employer elects to offer coverage to its employees under § 155.705(b)(3)(v)(B) as finalized in this rule.

d. Meaningful Difference Standard for Qualified Health Plans in the FFEs

We have modified § 156.298(b) to have the standard set at one material difference rather than two and have removed premiums as one of the characteristics among which plans must be different.

We are not finalizing the text proposed at § 156.298(b)(5) and are therefore renumbering the provisions proposed at § 156.298(b)(1) through (b)(7) as § 156.298(b)(1) through (b)(6) in this final rule.

e. Quality Standards: Establishment of Patient Safety Standards for QHPs Issuers

We are modifying the documentation standard in § 156.1110(b) to remove the reference to information other than the CCN to indicate that only the CCN is required to be collected.

f. Financial Programs

We are extending the deadline for an issuer to request reconsideration from 30 to 60 calendar days in § 156.1220(a)(3).

We are extending the deadline for an issuer to request an informal hearing before a CMS hearing officer from 15 calendar days to 30 calendar days in § 156.1220(b)(1).

We are modifying in § 156.1220(a)(3), § 156.1220(b)(1) and § 156.1220(c)(1) the date from which certain appeals-related deadlines will run so that the deadlines will run from the date of issuance of the notification, reconsideration decision, or CMS hearing officer decision, rather than the date an issuer receives the notification or decision.

We are establishing a minimum materiality threshold that an issuer must meet in order to request reconsideration for (1) advance payments of the premium tax credit, advance payments of cost-sharing reductions, or Federally-facilitated Exchange user fees (2) risk adjustment payment or charges (3) reinsurance payments (4) risk adjustment default charges (5) reconciliation payments or charges for cost-sharing reductions and (6) risk corridors payments or charges in § 156.1220(a)(2). That threshold is equal to the lesser of 1 percent of the applicable payment or charge listed in the prior enumerated categories payable to or due from the issuer for a benefit year, or $10,000.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. This final rule contains information collection requirements (ICRs) that are subject to review by OMB. A description of these provisions is given in the following paragraphs with an estimate of the annual burden, summarized in Table 7. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We generally used data from the Bureau of Labor Statistics to derive average labor costs (including capital

costs, overhead, and fringe benefits) for estimating the burden associated with the ICRs.

A. ICRs Related to HHS Audits of State-Operated Reinsurance Programs (§ 153.270)

Under § 153.270, HHS or its designee may conduct a financial and programmatic audit of a State-operated reinsurance program to assess compliance with reinsurance program requirements. Under this provision, if an audit results in a finding of material weakness or significant deficiency, a State must ensure that the applicable reinsurance entity provides a written corrective action plan to HHS for approval within 60 calendar days of the issuance of the final audit report. The burden associated with meeting this third party disclosure requirement includes the burden for a State that establishes a reinsurance program to ensure that its applicable reinsurance entity and any relevant contractors, subcontractors, or agents cooperate with and take appropriate actions in connection with any audit, and the burden associated with preparing and submitting a corrective action plan to HHS for approval. Because only one State will operate reinsurance in the 2014 benefit year, this collection is exempt from the PRA under 44 U.S.C. 3502(3)(A)(i), and we will not seek approval from OMB for this information collection requirement. We discuss the impact associated with HHS audits of State-operated reinsurance programs in the Regulatory Impact Analysis section of this final rule.

B. ICRs Regarding Issuer and Entity Administrative Burden Related to Audits for the Premium Stabilization Programs (§ 153.405(i); § 153.540(a); § 153.410(d); § 153.620(c))

This final rule provides HHS or its designee with the authority to audit QHP issuers, contributing entities, and issuers of risk adjustment covered plans or reinsurance-eligible plans to assess compliance with the requirements of subparts E, F, G and H of part 153, as applicable. As mentioned earlier in this rule, where possible, we intend to align the risk corridors audit process with the audits conducted for the MLR program. Therefore, we believe that the issuer burden associated with the risk corridors audit is already accounted for as part of the Supporting Statement for the MLR program approved under OMB control number 0938–1164.

These provisions will require a third-party disclosure requirement of issuers of risk adjustment covered plans and issuers of reinsurance-eligible plans to prepare and compile the financial and programmatic information necessary to comply with the audit. In the proposed rule, we estimated that it would take a total of approximately 60 hours of preparation time for each onsite review and an additional 30 hours of onsite time for each issuer, at an hourly labor cost of $53.75 and a total cost of approximately $4,838 for each issuer. Because we have not finalized our audit protocols, it is difficult to accurately estimate an audit rate. However, we believe that it is reasonable to assume that approximately 120 issuers, representing roughly 5 percent of issuers of risk adjustment covered plans or reinsurance-eligible plans, would be audited. Therefore, we estimated an aggregate burden of 10,800 hours and $580,500 for issuers as a result of this requirement.

For contributing entities, we estimated that the disclosure burden would be substantially less because the audit would be simpler. We estimated the burden to be approximately one-quarter of that of an issuer of a risk adjustment covered plan or a reinsurance-eligible plan, or approximately 22.5 hours (at an hourly rate of $53.75) at a cost of approximately $1,209 for each contributing entity. We estimated that approximately 1 percent of contributing entities would be audited, representing 226 contributing entities. Therefore, we estimated an aggregate burden of 5,085 hours, or $273,319, as a result of this requirement.

Comment: One commenter stated that HHS's burden estimates were unreasonable. In particular, the commenter believed that the initial meeting by issuers of risk adjustment covered plans and reinsurance-eligible plans with auditors would involve more personnel and labor hours.

Response: In response to this comment, we are revising our estimate for the onsite review portion of the audit to reflect the labor costs associated with additional personnel who would generally be expected to be involved in meetings and reviews. The new burden estimate includes 2 hours to schedule the onsite activities with the compliance reviewer (at an hourly labor cost of $53.75), 32 hours for an introductory meeting involving 8 managers, 12 hours for three managers to tour with reviewers onsite, 15 hours of interview time with three managers, 8 hours to walk through processes with the reviewer, and 16 hours for concluding meetings, resulting in a total of 85 hours of onsite time for each issuer. Therefore, we estimate it will take 60 hours of preparation time and an additional 85 hours of onsite time for each issuer. We now estimate it will require a total of 145 hours at a cost of approximately $7,794 for each issuer to make information available to HHS for an onsite review. For approximately 120 issuers, representing roughly 5 percent of issuers of risk adjustment covered plans or reinsurance-eligible plans that might be audited in a year, we now estimate an aggregate burden of 17,400 hours and $935,280 for issuers as a result of this requirement.

For contributing entities, we now estimate the burden to be approximately 37 hours at a cost of approximately $1,989 for each contributing entity, or about one quarter of that of an issuer of a risk adjustment covered plan or a reinsurance-eligible plan. We estimate that approximately 1 percent of contributing entities will be audited, representing 226 contributing entities. Therefore, we now estimate an aggregate burden of 8,362 hours, or $449,514 for contributing entities as a result of this requirement.

We will revise the information collection currently approved under OMB Control Number 0938–1155 with an October 31, 2015 expiration date to account for this additional burden.

C. ICRs Regarding Potential Adjustments for Transitional Plans (§ 153.500–§ 153.540)

We will make adjustments to the premium stabilization programs to help mitigate any unexpected losses for QHP issuers with plans that are affected by the transitional policy described in the preamble of this rule. To effectuate potential adjustments, we must estimate the State-specific effect on average claims costs. We thus will require all issuers participating in the individual and small group markets in a State to submit to HHS a member-month enrollment count for transitional plans and non-transitional plans in the individual and small group markets. This submission will occur in 2015 prior to the risk corridors July 31, 2015 data submission deadline. HHS will analyze that enrollment data, and publish the State-specific adjustments that issuers would use in the risk corridors calculations for the 2014 benefit year. To reduce the burden on issuers, we are considering coordinating this data collection with other data collections for the premium stabilization programs.

We estimate that there will be approximately 2,400 issuers in the individual and small group markets in the 2014 benefit year, and that it will take an insurance analyst approximately 30 minutes (at an hourly labor cost of $38.49) to estimate enrollment in

transitional plans and non-transitional plans and submit this information to HHS. Therefore, we estimate a cost of approximately $19.25 for each issuer, and an aggregate cost of $46,200 for all individual and small group market issuers (though this cost may be lower depending upon the data collection method we adopt). Because we anticipate collecting this information in early 2015, and because we expect to issue additional clarifying guidance on this policy, we will seek OMB approval and solicit public comment on this data collection requirement at a future date.

D. ICRs Regarding Risk Corridors Data Validation (§ 153.530 and § 153.540)

For the 2014 benefit year, we will collect risk corridors data using the same form as is used for MLR data collection, at the same time (July 31st of the year following the applicable benefit year). We intend to modify the MLR collection form for benefit year 2015, approved under OMB control number 0938–1164, to add reporting elements (for example, QHP-specific premium amounts) that are required under the risk corridors data submission requirements at § 153.530. We intend to include these data elements in an amendment to the information collection approved under OMB control number 0938–1164 for MLR data submission that we will publish for public comment and advance for OMB approval in the future.

Because the MLR and risk corridors programs will require similar data, we estimate that submitting the data elements required for the risk corridors program will impose limited additional burden on issuers. We estimate that it will take each QHP issuer approximately 1.5 hours, representing 1 hour for an insurance analyst (at an hourly labor cost of $38.49) and 30 minutes for a senior manager (at an hourly labor cost of $77), to input and review data that is specific to the risk corridors program in the MLR and risk corridors reporting form for benefit year 2015. In the proposed ICR, we estimated that 1,200 QHP issuers would submit risk corridors data for the 2014 benefit year in the 2015 risk corridors and MLR reporting cycle. We are revising that estimate to reflect our most recent estimate of the number of QHP issuers that have registered in our Health Insurance Oversight System (HIOS) for the 2014 benefit year, and now estimate that approximately 475 QHP issuers will submit data. Therefore, we now estimate an aggregate burden of 712.5 hours (at a total cost of approximately $36,573) for QHP issuers as a result of this requirement. We will revise the information collection currently approved under OMB Control Number 0938–1155 with an October 31, 2015 expiration date to account for this additional burden.

E. ICRs Regarding Data Validation Requirements When HHS Operates Risk Adjustment (§ 153.630)

Pursuant to § 153.630(b)(1) of this final rule, an issuer of a risk adjustment covered plan must engage one or more independent auditors to perform an initial validation audit of a sample of its risk adjustment data selected by HHS. This provision also requires the issuer to provide HHS with the identity of the initial validation auditor, and attest to the absence of conflicts of interest between the initial validation auditor (or the members of its audit team, owners, directors, officers, or employees) and the issuer (or its owners, directors, officers, or employees), in a timeframe and manner to be specified by HHS. We previously estimated the cost to issuers to conduct an initial validation audit in the 2014 Payment Notice and the associated information collection request approved under OMB Control Number 0938–1155 with an October 1, 2015 expiration date. Therefore, the burden associated with this reporting requirement is the time and effort necessary to report the auditor's identity to HHS. We estimate it will take an insurance operations analyst (at an hourly labor cost of $38.49) and a senior manager (at an hourly labor cost of $77) each approximately 15 minutes to prepare and send an electronic report to HHS. Therefore, for 2,400 risk adjustment covered issuers in the individual and small group markets, the aggregate burden associated with this requirement is 1,200 hours, at an approximate cost of $69,300.

In § 153.630(b)(8), we require the initial validation auditor to measure and report to the issuer and HHS, in a manner and timeframe specified by HHS, the inter-rater reliability rates among its reviewers. Also in this provision, we require that the initial validation auditor achieve a minimum consistency measure of 95 percent for demographic, enrollment, and health status review outcomes (85 percent for 2014 and 2015). We believe establishing standards for inter-rater reliability among reviewers is standard practice in the industry and will not result in extra cost for the initial validation auditor. Therefore, the burden associated with this reporting requirement is the time and effort for the initial validation auditor to report the inter-rater reliability rate to the issuer and to HHS. We estimate it will take an insurance operations analyst (at an hourly labor cost of $38.49) and a senior manager (at an hourly labor cost of $77) each approximately 15 minutes to report the inter-rater reliability rate to the issuer and to HHS. Therefore, assuming that 2,400 issuers of risk adjustment covered plans each engage one independent auditor to perform the initial validation audit, the aggregate burden associated with this requirement is 1,200 hours, at an approximate cost of $69,300. We will revise the information collection currently approved under OMB Control Number 0938–1155 with an October 31, 2015 expiration date to account for this additional burden.

F. ICRs Regarding Quarterly Data Submissions (§ 153.700(a))

Section 153.700 provides that issuers of a risk adjustment covered plan or a reinsurance-eligible plan must establish a dedicated distributed data environment and provide data access to HHS, in a manner and timeframe specified by HHS, for any HHS-operated risk adjustment and reinsurance program. In this final rule, we clarify this timeframe, requiring that an issuer must make good faith efforts to make complete, current enrollment and claims files accessible through its dedicated distributed data environments no less frequently than quarterly, once the issuer's dedicated distributed data environment is established.

Based on HHS's most recent estimate of fully insured issuers in the individual and small group markets, we estimate that 2,400 issuers will be subject to the requirement to establish a dedicated data environment to either receive reinsurance payments or make risk adjustment transfers. Although in this rule we clarify that issuers must make this data available to HHS on a quarterly basis, the information collection and the aggregate burden associated with this requirement is already accounted for under the Premium Stabilization Rule Supporting Statement that is approved under OMB control number 0938–1155 with an October 31, 2015 expiration date. We will revise that supporting statement to specify that issuers must comply with this information collection requirement on a quarterly basis.

G. ICRs Related to Confirmation of Dedicated Distributed Data Environment Reports (§ 153.700(d) and (e))

Under § 153.710(d) of this final rule, we require that within 30 calendar days of the date of an interim dedicated distributed data environment report from HHS, an issuer of a reinsurance-

eligible or risk adjustment covered plan must either confirm to HHS that the information in the interim reports for the risk adjustment and reinsurance programs accurately reflects the data to which the issuer has provided access to HHS through its dedicated distributed data environment in accordance with § 153.700(a) for the timeframe specified in the report, or describe to HHS any inaccuracy it identifies in the interim report. Similar to the interim report process, in § 153.710(e), we require that the issuer either confirm to HHS that the information in the final dedicated distributed data environment report accurately reflects the data to which the issuer has provided access to HHS through its dedicated distributed data environment in accordance with § 153.700(a) for the benefit year specified in the report, or describe to HHS any inaccuracy it identifies in the final dedicated distributed data environment report within 15 calendar days of the date of the report.

We estimate that 2,400 issuers of risk adjustment covered plans and reinsurance-eligible plans will be subject to this requirement, and that issuers will compare enrollee condition codes with risk scores and analyze claims costs to confirm information in the interim and final dedicated distributed data environment reports. On average, we estimate that it will take an insurance operations analyst (at an hourly labor cost of $38.49) approximately 2 hours to respond to an interim report and 6 hours to respond to the final dedicated distributed data environment report. Therefore, we estimate an aggregate burden of 19,200 hours and $739,008 for 2,400 issuers as a result of this requirement. We will revise the information collection currently approved under OMB Control Number 0938–1155 with an October 31, 2015 expiration date to account for this additional burden.

H. ICRs Regarding Privacy and Security of Personally Identifiable Information (§ 155.260(a))

In § 155.260(a), we state that an Exchange, at its option, may submit to the Secretary a request for approval of a proposed use or disclosure of eligibility and enrollment PII. The Exchange submitting such a request would describe the nature of the proposed use or disclosure and how it would ensure the efficient operation of the Exchange consistent with section 1411(g)(2)(A) of the Affordable Care Act, and describe the efficiency. The requesting Exchange also would describe how the information to be used or disclosed would be protected in compliance with the privacy and security standards established by the Exchange and describe those protections. While this reporting requirement is subject to the PRA, we believe the associated burden is exempt under 5 CFR 1320.3(h)(1). This reporting is not intended as a substitute for a collection of information of, or to monitor, compliance with regulatory standards. Therefore, we are not seeking approval from OMB for these information collection requirements.

I. ICRs Regarding Advance Payments of Cost-Sharing Reductions (§§ 155.1030, 156.430, 156.470)

Based on our experience implementing the process for calculating advance payments of cost-sharing reductions for the 2014 benefit year, we are modifying §§ 155.1030, 156.430, and 156.470. However, because our previous methodology used data collected through vehicles that are used for other purposes, we expect these changes to only marginally reduce the reporting burden for issuers and Exchanges. Therefore, we will not be revising the burden estimates in the corresponding PRA packages at this time.

J. ICRs Regarding Quality Standards: Establishment of Patient Safety Standards for QHP Issuers (§ 156.1110)

In § 156.1110, we describe the information collection, recordkeeping, and disclosure requirements that a QHP issuer must meet to demonstrate compliance with the patient safety standards finalized in this rule. The burden estimate associated with these standards includes the time and effort required for QHPs to maintain and submit hospital CMS Certification Numbers to the Exchange, upon request, that demonstrates that each of its contracted hospitals with greater than 50 beds meets the patient safety standards required in § 156.1110(a). In the near future, HHS intends to publish a rule proposing more specific quality standards for Exchanges and QHPs and will solicit public comment. At that time and per requirements outlined in the PRA, we intend to estimate the burden on QHPs to comply with the patient safety provisions of § 156.1110.

K. ICRs Regarding Administrative Appeals (§ 156.1220)

In § 156.1220, we establish an administrative appeals process to address unresolved discrepancies for advance payment of the premium tax credit, advance payment and reconciliation of cost-sharing reductions, FFE user fees, and the premium stabilization programs, as well as any assessment of a default risk adjustment charge under § 153.740(b).

In § 156.1220(a) as finalized in this rule, an issuer may file a request for reconsideration to contest a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error for the amount of: (1) Advance payment of the premium tax credit, advance payment of cost-sharing reductions or an FFE user fee charge for a particular month; (2) risk adjustment payments or charges for a benefit year, including an assessment of risk adjustment user fees; (3) reinsurance payments for a benefit year; (4) a risk adjustment default charge for a benefit year; (5) a reconciliation payment or charge for cost-sharing reductions for a benefit year; or (6) risk corridors payments or charges for a benefit year. While the hours involved in a request for reconsideration may vary, for purposes of this burden estimate we estimate that it will take an insurance operations analyst 1 hour (at an hourly labor cost of $38.49) to make the comparison and submit a request for reconsideration to HHS. We estimate that 24 issuers, representing approximately 1 percent of all issuers that may be eligible for reinsurance payments, risk adjustment payments or charges (including any assessment of risk adjustment user fees or a default risk adjustment charge), advance payment and reconciliation of cost-sharing reductions, advance payment of the premium tax credit, and FFE user fees, will submit a request for reconsideration, resulting in a total aggregate burden of approximately $924. We will revise the information collection currently approved OMB Control Number 0938–1155 with an October 31, 2015 expiration date to account for this additional burden.

In § 156.1220(b) of this final rule, an issuer that is dissatisfied with the reconsideration decision regarding: (1) Risk adjustment payments and charges, including an assessment of risk adjustment user fees; (2) reinsurance payments; (3) default risk adjustment charge; (4) reconciled cost-sharing reduction amounts; or (5) risk corridors payments or charges, provided under paragraph (a) of § 156.1220, is entitled to an informal hearing before a CMS hearing officer, if a request is made in writing within 30 calendar days of the date of the reconsideration decision. Further review is available from the Administrator of CMS. However, we believe these processes will occur extremely infrequently. Since collections from fewer than 10 entities are exempt from the PRA under 44

U.S.C. 3502(3)(A)(i), we will not seek PRA approval for this information collection requirement.

TABLE 7—ANNUAL REPORTING, RECORDKEEPING AND DISCLOSURE BURDEN

Regulation section(s)	Number of respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/ maintenance costs ($)	Total cost ($)
§ 153.405	226	226	37.00	8,362	53.75	449,514	0	449,514
§ 153.410; § 153.620	120	120	145.00	17,400	53.75	935,280	0	935,280
§ 153.500–§ 153.540	2,400	2,400	0.50	1,200	38.49	46,200		46,200
§ 153.540	475	475	1.50	712.5	51.33	36,573	0	36,573
§ 153.630(b)(1)	2,400	2,400	0.50	1,200	57.75	69,300	0	69,300
§ 153.630(b)(8)	2,400	2,400	0.50	1,200	57.75	69,300	0	69,300
(§ 153.700(d) and (e))	2,400	2,400	8.00	19,200	38.49	739,008	0	739,008
§ 156.1220	24	24	1.00	24	38.49	924	0	924
Total	[a] 3,245					2,346,099	0	2,346,099

[a] ICRs associated with § 153.500, § 153.630(b)(1), § 153.630(b)(8) and § 153.700(d) and (e) apply to the same respondents, so the total number of unique respondents is 3,970.

We have submitted an information collection request to OMB for review and approval of the ICRs contained in this final rule. The requirements are not effective until approved by OMB and assigned a valid OMB control number.

To obtain copies of the supporting statement and any related forms for the paperwork collections referenced above, access CMS's Web site at *http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html* or email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office at 410–786–1326.

If you comment on these information collection requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, CMS–9972–F. Fax: (202) 395–5806; or Email: *OIRA_submission@omb.eop.gov*.

VI. Regulatory Impact Analysis

A. Statement of Need

This final rule provides standards related to the premium stabilization programs (risk adjustment, reinsurance, and risk corridors) that will protect issuers from the potential effects of adverse selection and protect consumers from increases in premiums due to issuer uncertainty. The Premium Stabilization Rule and the 2014 Payment Notice provided detail on the implementation of these programs, including the specific parameters applicable to these programs. This final rule provides additional standards with respect to composite premiums, privacy and security of personally identifiable information, the open enrollment period for 2015, the AV Calculator, the annual limitation on cost sharing for stand-alone dental plans, the meaningful difference standard for QHPs offered through an FFE, patient safety standards for issuers of QHPs, the Small Business Health Options Program, cost-sharing parameters, cost-sharing reductions, and FFE user fees.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any one year).

OMB has determined that this rule is "economically significant" within the meaning of section 3(f)(1) of Executive Order 12866, because it is likely to have an annual effect of $100 million in any one year. Accordingly, we have prepared an RIA that presents the costs and benefits of this final rule.

Although it is difficult to discuss the wide-ranging effects of these provisions in isolation, the overarching goal of the premium stabilization programs and Exchange-related provisions and policies of the Affordable Care Act is to make affordable health insurance available to individuals who do not have access to affordable employer-sponsored coverage. The provisions within this final rule are integral to the goal of expanding access to affordable coverage. For example, the premium stabilization programs decrease the risk of financial loss that health insurance issuers might otherwise expect in 2015 and the advance payments of the premium tax credit and cost-sharing reduction programs assist low- and moderate-income consumers and Indians in purchasing health insurance. The combined impacts of these provisions affect the private sector, issuers, and consumers, through increased access to health care services, including preventive services, decreased uncompensated care, lower premiums, establishment of patient safety standards, and increased plan transparency. Through the reduction in financial uncertainty for issuers and increased affordability for consumers, these provisions are expected to increase access to health coverage.

In this RIA, we discuss the requirements in this final rule related to cost sharing and FFE user fees, as well as new oversight provisions for the premium stabilization programs. We also discuss the impact of the

transitional policy discussed earlier on the risk corridors and reinsurance programs, and the impact on reinsurance contributions of the change in the definition of contributing entities.

Comment: Several commenters stated that the proposed regulatory impact statement lacked an adequate economic analysis. In particular, the commenters criticized listing only $2 million in annual costs and $14 million in transfer payments for a rule determined by OMB to involve costs of $100 million or more annually. One commenter said HHS should have included its internal analysis of the effect of regulation on enrollment and premium in this impact statement, and the omission of this analysis appeared to be a willful attempt to withhold information from the public. The commenter asked HHS to spell out how the rule affects premium costs, employer costs, and taxpayer subsidies.

Response: We previously estimated the annualized impact on issuers, contributing entities, and States of transfers and other programs in the Premium Stabilization Rule and in the 2014 Payment Notice. Therefore, to avoid double-counting, Table 8 contains only incremental changes incurred as a result of provisions in this rule. The results of HHS's internal analyses were used to set reinsurance rates discussed in the 2014 Payment Notice, and again in this rule, where we estimate that, in 2015, reinsurance payments from the Federal government to individual market issuers will result in premium decreases in the individual market of between 5 and 6 percent relative to expected premiums without reinsurance. As detailed below, for this analysis, we continue to believe that the best available estimates of the impact of the Affordable Care Act on the Federal budget, enrollment in health insurance programs, and revenue collection are by the Congressional Budget Office. The CBO's most recent updates are available at *http://www.cbo.gov/sites/default/files/cbofiles/attachments/43900-2014-02-ACAtables.pdf.*

In our proposed rule, we noted that we were preparing an RIA because, while we were uncertain of the exact magnitude of the effect of the proposed adjustments to the risk corridors and reinsurance programs as a result of the transitional policy, we believed that the impact of the proposed adjustments and the impact of the other provisions in the proposed rule would reach the level of economic significance defined by OMB. In this final rule, we are finalizing our adjustment to the risk corridors program as proposed, and are lowering the reinsurance attachment point. Although it is difficult to estimate the exact impact of these policies, we describe our preliminary analysis of their monetary effect on health insurance issuers and the Federal government below.

Comment: A commenter criticized the regulatory analysis for failing to analyze and directly address the impact of the proposed rule's provision to exclude certain self-administered, self-insured group health plans from payment of reinsurance contributions, and requested that HHS disclose the number of participants and types of plans excluded and the per participant charge. Another commenter estimated the change would affect 14 million covered lives and increase the per capita contribution from remaining entities by $3.

Response: It is difficult to estimate the number of self-insured, self-administered group health plans that might be excluded from reinsurance contributions as a result of the provision in this rule. While we solicited information on the number of such organizations, we did not receive comments with quantitative detail. Therefore, we have not changed our proposed estimate.

C. Impact Estimates of the Payment Notice Provisions and Accounting Table

In accordance with OMB Circular A–4, Table 8 depicts an accounting statement summarizing HHS's assessment of the benefits, costs, and transfers associated with this regulatory action.

This final rule implements standards for programs that will have numerous effects, including providing consumers with affordable health insurance coverage, reducing the impact of adverse selection, and stabilizing premiums in the individual and small group health insurance markets and in an Exchange. We are unable to quantify certain benefits of this final rule—such as increased patient safety and improved health and longevity due to increased insurance enrollment, and certain costs—such as the cost of providing additional medical services to newly-enrolled individuals. The effects in Table 8 reflect qualitative impacts and estimated direct monetary costs and transfers resulting from the provisions of this final rule for contributing entities, States, Exchanges, and health insurance issuers. The annualized monetized costs described in Table 8 reflect direct administrative costs (including costs associated with labor, capital, overhead, and fringe benefits) to States and health insurance issuers as a result of the provisions in this rule, and include administrative costs estimated in the Collection of Information section. We note that the estimated transfers in Table 8 do not reflect any user fees paid by insurance issuers for FFEs because we cannot estimate those fee totals. We also note that, while the 2015 reinsurance contribution rate is lower than the 2014 reinsurance contribution rate, total reinsurance administrative expenses will increase from 2014 to 2015.

TABLE 8—ACCOUNTING TABLE

Benefits:

Qualitative:
* Increased enrollment in the individual market leading to improved access to health care for the previously uninsured, especially individuals with medical conditions, which will result in improved health and protection from the risk of catastrophic medical expenditures.
* A common marketing standard covering the entire insurance market, reducing adverse selection and increasing competition.
* Robust oversight of programs that use Federal funds to ensure proper use of taxpayer dollars.
* Access to higher quality health care through the establishment of patient safety standards.
* Increasing coverage options for small employers and part-time employees while mitigating the effect of adverse selection.

Costs:

	Estimate	Year dollar	Discount rate	Period covered
Annualized Monetized ($/year)	2.35 million	2014	7 percent	2014–2017
	2.35 million	2014	3 percent	2014–2017

Quantitative:
* Costs incurred by issuers and contributing entities to comply with provisions in this rule.
* Costs incurred by States for complying with audits of State-operated reinsurance programs.

Transfers:

	Estimate	Year dollar	Discount rate	Period covered
Annualized Monetized ($/year)	−17.25 million	2014	7 percent	2014–2017
	−16.76 million	2014	3 percent	2014–2017

* Transfers reflect incremental cost increases from 2014–2015 for reinsurance administrative expenses and the risk adjustment user fee, which are transfers from contributing entities and health insurance issuers to the Federal government.
* Unquantified: Lower premium rates in the individual market due to the improved risk profile of the insured, competition, and pooling.

This RIA expands upon the impact analyses of previous rules and utilizes the CBO analysis of the Affordable Care Act's impact on Federal spending, revenue collection, and insurance enrollment. The CBO's estimates remain the most comprehensive for provisions pertaining to the Affordable Care Act, and include Federal budget impact estimates for provisions that HHS has not independently estimated. The CBO's February 2014 baseline projections estimated that 25 million enrollees will enroll in Exchange coverage by 2018, including approximately 20 million Exchange enrollees who will be receiving premium tax credits or cost-sharing reductions.[56] CBO forecasts that 92 percent of non-elderly Americans will receive coverage by 2017. Participation rates among potential enrollees are expected to be lower in the first few years of Exchange availability as employers and individuals adjust to the features of the Exchanges. Table 9 summarizes the effects of the risk adjustment and reinsurance programs on the Federal budget for fiscal years 2014 through 2017, with the additional, societal effects of this final rule discussed in this RIA. We do not expect the provisions of this final rule to significantly alter CBO's estimates of the budget impact of the risk adjustment and reinsurance programs. CBO updated scoring for the Premium Stabilization programs and found all three programs will reduce the deficit by $8 billion over the budget window. For risk corridors, CBO now estimates the Federal government will pay $8 billion to issuers from FYs 2015–2017, but that collections for this program will total $16 billion, for a net yield of $8 billion to the Federal government. We note that transfers associated with the risk adjustment and reinsurance programs were previously estimated in the Premium Stabilization Rule; therefore, to avoid double-counting, we do not include them in the accounting statement for this final rule (Table 8).

In addition to utilizing CBO projections, HHS conducted an internal analysis of the effects of its regulations on enrollment and premiums. Based on these internal analyses, we anticipate that the quantitative effects of the provisions in this rule are consistent with our previous estimates in the 2014 Payment Notice for the impacts associated with the cost-sharing reduction program, the advance payments of the premium tax credit program, the premium stabilization programs, and FFE user fee requirements for health insurance issuers.

[56] "Updated Estimates for the Insurance Coverage Provisions of the Affordable Care Act," Congressional Budget Office, February 2014.

TABLE 9—ESTIMATED FEDERAL GOVERNMENT OUTLAYS AND RECEIPTS FOR THE RISK ADJUSTMENT AND REINSURANCE PROGRAMS FROM FY 2013–2017

[In billions of dollars]

Year	2014	2015	2016	2017	2013–2017
Risk Adjustment, Reinsurance, and Risk Corridors Program Payments	0	20	19	23	62
Risk Adjustment, Reinsurance, and Risk Corridors Program Collections	0	21	21	27	69

Source: Congressional Budget Office. 2014. *Appendix B: Updated Estimates of the Insurance Coverage Provisions of the Affordable Care Act.* February 4, 2014.

Risk Adjustment

The risk adjustment program is a permanent program created by the Affordable Care Act that transfers funds from lower risk, non-grandfathered plans to higher risk, non-grandfathered plans in the individual and small group markets, inside and outside the Exchanges. In subparts D and G of the Premium Stabilization Rule (45 CFR part 153) and in the 2014 Payment Notice, we established standards for the administration of the risk adjustment program.

A State approved or conditionally approved by the Secretary to operate an Exchange may establish a risk adjustment program, or have HHS do so on its behalf. As described in the 2014 Payment Notice, if HHS operates risk adjustment on behalf of a State, it will fund its risk adjustment program operations by assessing a risk adjustment user fee on issuers of risk adjustment covered plans. For the 2015 benefit year, we estimate that the total cost for HHS to operate the risk adjustment program on behalf of States for 2015 will be approximately $27.3 million, and that the risk adjustment user fee will be $0.96 per enrollee per year for HHS to operate the risk adjustment program on behalf of States for 2015.

In § 153.620(c) of this final rule, we establish that HHS or its designee may audit an issuer of a risk adjustment covered plan, when HHS operates risk adjustment on behalf of a State, to assess the issuer's compliance with the requirements of subparts G and H of 45 CFR part 153. As discussed above, HHS intends to fund risk adjustment operations (not including Federal personnel costs), including risk adjustment program integrity and audit functions, by collecting a per capita user fee from issuers of risk adjustment covered plans. Therefore, we believe that the costs to the Federal government associated with the risk adjustment audit activities in this final rule will be covered through the risk adjustment user fee, and that there will be no impact for the Federal government as a result of the audit provisions. The audit provision would result in additional costs for issuers of risk adjustment covered plans related to gathering information and preparing for an audit. We discuss the administrative costs associated with this requirement for issuers in the Collection of Information section of this final rule.

Although this final rule will result in some additional administrative burden for issuers of risk adjustment covered plans as a result of the requirements for risk adjustment data validation and submission of discrepancy reports in response to interim and final dedicated distributed data environment reports, we note that much of the impact associated with establishing a dedicated distributed data environment and a risk adjustment data validation process has previously been estimated in the Premium Stabilization Rule and the 2014 Payment Notice. We do not believe that provisions contained within this rule substantially alter the previous estimates. We describe these administrative costs in the Collection of Information Requirements section of this rule.

Reinsurance

The Affordable Care Act directs that a transitional reinsurance program be established in each State to help stabilize premiums for coverage in the individual market from 2014 through 2016. In the 2014 Payment Notice, we expanded upon the standards set forth in subparts C and E of the Premium Stabilization Rule (45 CFR part 153) and established the 2014 uniform reinsurance payment parameters and national contribution rate. In this final rule, we set forth the 2015 uniform reinsurance payment parameters and contribution rate, and certain oversight provisions related to the operation of the reinsurance program.

Section 153.220(c) provides that HHS will publish the uniform per capita reinsurance contribution rate for the upcoming benefit year in the annual HHS notice of benefit and payment parameters. Section 1341(b)(3)(B)(iii) of the Affordable Care Act specifies that $10 billion for reinsurance contributions is to be collected from contributing entities in 2014 (the reinsurance payment pool), $6 billion in 2015, and $4 billion in 2016. Additionally, sections 1341(b)(3)(B)(iv) and 1341(b)(4) of the Affordable Care Act direct that $2 billion in funds is to be collected for contribution to the U.S. Treasury in 2014, $2 billion in 2015, and $1 billion in 2016. Finally, section 1341(b)(3)(B)(ii) of the Affordable Care Act allows for the collection of additional amounts for administrative expenses. Taken together, these three components make up the total dollar amount to be collected from contributing entities in each of the three years of the reinsurance program under the uniform per capita contribution rate.

For the 2015 benefit year, if HHS operates the reinsurance program on behalf of a State, HHS would retain $0.14 as an annual per capita fee to fund HHS's performance of all reinsurance functions. If a State establishes its own reinsurance program, HHS would transfer $0.07 of the per capita administrative fee to the State for purposes of administrative expenses incurred in making reinsurance payments, and retain the remaining $0.07 to offset the costs of contribution collection.

To safeguard the use of Federal funds in the transitional reinsurance program, we provided in § 153.270(a) of this final rule that HHS or its designee may conduct a financial and programmatic audit of a State-operated reinsurance program to assess compliance with the requirements of subparts B and C of 45 CFR part 153. As discussed above, HHS intends to fund reinsurance operations (not including Federal personnel costs), including program integrity and audit functions, by collecting as part of the uniform contribution rate, administrative expenses associated with operating the reinsurance program from all reinsurance contributing entities. Therefore, we believe that the costs to the Federal government associated with

the reinsurance audit activities in this final rule would be covered through the reinsurance contribution rate, and that there would be no net budget impact for the Federal government as a result of the audit provision. Because this audit requirement would direct a State that establishes a reinsurance program to ensure that its applicable reinsurance entity and any relevant contractors, subcontractors, or agents cooperate with an audit, and would direct the State to provide to HHS for approval a written corrective action plan; implement the plan; and provide to HHS written documentation of the corrective actions once taken, if the audit resulted in a finding of material weakness or significant deficiency, the requirement does impose a cost on States operating reinsurance. However, we believe that State-operated reinsurance programs would already electronically maintain the information necessary for an audit as part of their normal business practices and as a result of the maintenance of records requirement set forth in § 153.240(c), no additional time or effort will be necessary to develop and maintain audit information. We estimate that it will take a compliance analyst (at an hourly labor cost of $53.75) 40 hours to gather the necessary information required for an audit, 5 hours to prepare a corrective action plan based on the audit findings and 64 hours to implement and document, if necessary, the corrective actions taken. We also estimate a senior manager (at an hourly labor cost of $77) will take 5 hours to oversee the transmission of audit information to HHS and to review the corrective action plan prior to submission to HHS, and 16 hours to oversee implementation of any corrective actions taken. Therefore, we estimate a total administrative cost of approximately $7,476 for each State-operated reinsurance program as a result of this audit requirement. For the one State that will operate reinsurance for the 2014 benefit year, we estimate a burden of approximately $7,476 as a result of this requirement. Although we have estimated the cost of a potential audit in this RIA, we note that we may not audit State-operated reinsurance programs.

In § 153.405(i) and § 153.410(d), we establish that HHS may audit contributing entities and issuers of reinsurance-eligible plans to assess compliance with reinsurance program requirements. We discuss the costs to contributing entities and issuers of reinsurance-eligible plans as a result of this requirement in the Collection of Information section of this proposed rule. We intend to combine issuer audits for the premium stabilization programs whenever practicable to reduce the financial burden of these audits on issuers. Consequently, we anticipate that, because issuers of reinsurance-eligible plans may also be subject to risk adjustment requirements, we would conduct these audits in a manner that avoids overlapping review of information that is required for both programs.

In this final rule, we are finalizing with modifications the definition of a contributing entity for the purpose of reinsurance contributions. Specifically, we exempt self-insured, self-administered plans that do not use a TPA to perform claims processing, claims adjudication, and enrollment functions from the requirement to make reinsurance contributions for the 2015 and 2016 benefit years. As stated earlier in this regulatory impact analysis, it is difficult to estimate the number of self-insured, self-administered group health plans that might be affected by this modification. We did not receive quantitative estimates in comments, although as previously stated, we expect that few entities will qualify for this exemption. Therefore, we have not changed our proposed 2015 reinsurance contribution rate.

Risk Corridors

The Affordable Care Act created a temporary risk corridors program for the years 2014, 2015, and 2016 that applies to QHPs, as defined in § 153.500. The risk corridors program is a mechanism for sharing risk for allowable costs between the Federal government and QHP issuers. The Affordable Care Act established the risk corridors program as a Federal program; consequently, HHS will operate the risk corridors program under Federal rules with no State variation. The risk corridors program will help protect against inaccurate rate setting in the early years of the Exchanges by limiting the extent of issuer losses and gains. HHS intends to implement this program in a budget neutral manner.

As mentioned elsewhere in this rule, for the 2014 benefit year, we are making an adjustment to the risk corridors formula that would help mitigate potential QHP issuers' unexpected losses that are attributable to the effects of the transitional policy. We also estimate that this adjustment would result in direct administrative costs for individual and small group market issuers that are discussed in the Collection of Information section of this final rule. Because of the difficulty associated with predicting State enforcement of the 2014 market rules and estimating the enrollment in transitional plans and in QHPs, it is difficult to estimate the precise magnitude of this impact on aggregate risk corridors payments and charges at this time.

Our initial modeling suggests that this adjustment for the transitional policy could increase the total risk corridors payment amount made by the Federal government and decrease risk corridors receipts, resulting in an increase in payments. However, we estimate that even with this change, the risk corridors program is likely to be budget neutral or, will result in net revenue to the Federal government. The magnitude of this effect seems likely to be substantially smaller than the magnitude of the effect of the transitional policy itself (because risk corridors applies only to the extent of an issuer's QHP business), and the magnitude of the effect of the reduction of the reinsurance attachment point and potential increased coinsurance payout. Because reinsurance receipts are a parameter in the risk corridors calculation, the increase in reinsurance payments that would result from lowering the attachment point and potentially increasing the coinsurance rate would exert downward pressure on an issuer's risk corridors ratio. Consequently, while the transitional risk corridors adjustment will result in higher risk corridors payments than would occur if no transitional adjustment were in place, we believe that the risk corridors program as a whole will be budget neutral or, will result in net revenue to the Federal government in FY 2015 for the 2014 benefit year. We note that even with an estimated increase in outlays, CBO still projects the Premium Stabilization programs to reduce the deficit by approximately $8 billion over the budget window. HHS intends to implement this program in a budget neutral manner.

To ensure the integrity of risk corridors data reporting, we establish HHS authority in § 153.540(a) of this final rule to conduct post-payment audits of QHP issuers. We are contemplating several ways to reduce issuer burden, such as conducting the risk corridors audits using the existing MLR audit process or conducting risk corridors audits under an overall issuer audit program. Therefore, as described in the Collection of Information section of this rule, we believe that the cost for issuers that would result from this audit requirement is already accounted for as part of the MLR audit process.

Provisions Related to Cost Sharing

The Affordable Care Act provides for the reduction or elimination of cost sharing for certain eligible individuals enrolled in QHPs offered through the Exchanges. This assistance will help many low- and moderate-income individuals and families obtain health insurance—for many people, cost sharing is a barrier to obtaining needed health care.[57]

To support the administration of the cost-sharing reduction program, we are finalizing reductions in the maximum annual limitation on cost sharing for silver plan variations for 2015 and minor modifications to the standards relating to the design of cost-sharing reduction plan variations. We are also finalizing certain modifications to the methodology for calculating advance payments for cost-sharing reductions. However, we do not believe these changes will result in a significant economic impact. Therefore, we do not believe the provisions related to cost-sharing reductions in this rule as finalized will have an impact on the program established by and described in the 2014 Payment Notice.

In this final rule, we also establish the methodology for calculating the premium adjustment percentage, and finalize the premium adjustment percentage for the 2015 benefit year. Section 156.130(e) provides that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013, and that this percentage will be published annually in the HHS notice of benefit and payment parameters. The annual premium adjustment percentage that is issued sets the rate of increase for four parameters detailed in the Affordable Care Act: the annual limitation on cost sharing (defined at § 156.130(a)); the annual limitation on deductibles for plans in the small group (defined at § 156.130(b)); and the section 4980H(a) and section 4980H(b) assessable payment amounts (proposed at 26 CFR 54.4980H in the "Shared Responsibility for Employers Regarding Health Coverage," published in the **Federal Register** January 2, 2013 (78 FR 218)). We believe that the 2015 premium adjustment percentage is well within the parameters used in the modeling of the Affordable Care Act, and do not expect that it will alter CBO's February 2014 baseline estimates of the budget impact.

Annual Open Enrollment Period

We revised § 155.410(e) and (f) to amend the dates for the annual open enrollment period and related coverage effective dates. These amendments would benefit issuers at no additional cost, as Exchanges will delay their QHP certification dates by at least one month, giving issuers additional time. Because open enrollment dates will be moved forward, Exchanges will still have the same amount of time for the QHP certification process, and we do not anticipate that this comes at an additional cost to Exchanges. Consumers would have the benefit of a more beneficial open enrollment period, without any additional demand placed on them.

Calculation of Plan Actuarial Value

Issuers may incur minor administrative costs associated with altering cost-sharing parameters of their plan designs to ensure compliance with AV requirements when utilizing the AV Calculator from year-to-year. These requirements were established in the EHB Rule and are in accordance with the provisions in this final rule. Since issuers have extensive experience in offering products with various levels of cost sharing and since these modifications are expected to be relatively minor for most issuers, HHS expects that the process for computing AV with the AV Calculator will not demand many additional resources.

User Fees

To support the operation of FFEs, we require in § 156.50(c) that a participating issuer offering a plan through an FFE must remit a user fee to HHS each month equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year and the monthly premium charged by the issuer for each policy under the plan where enrollment is through an FFE. For the 2015 benefit year, we are establishing a monthly user fee rate equal to 3.5 percent of the monthly premium. We do not have an aggregate estimate of the collections from the user fee at this time because we do not yet have a count of the number of States in which HHS will run an FFE or FF–SHOP in 2015.

SHOP

The SHOPs facilitate the enrollment of eligible employees of small employers into small group health insurance plans. A qualitative analysis of the costs and benefits of establishing a SHOP was included in the RIA published in conjunction with the Exchange Establishment Rule.[58] This RIA addresses the additional costs and benefits of the modifications in this final rule to the SHOP sections of the Exchange Establishment Rule.

In this rule, we revise § 155.705(b)(1), which lists the rules regarding eligibility and enrollment to which the SHOPs must adhere, to include additional provisions regarding termination of coverage in SHOPs and SHOP employer and employee eligibility appeals that were finalized in the first final Program Integrity Rule. In § 155.705(b)(3), we establish that an employer in the FF–SHOPs has the option to offer its employees either a single SADP or a choice of all SADPs available at a single SADP actuarial value level for plan years beginning on or after January 1, 2015.

We are also amending § 155.705(b)(4) to allow SHOPs performing premium aggregation to establish a standard method for premium calculation, payment, and collection. We are establishing that in the FF–SHOPs, after premium aggregation becomes available in plan years beginning on or after January 1, 2015, employers will be required to remit premiums to the FF–SHOP in accordance with a payment timeline and process established by HHS through guidance, and that premiums for coverage of less than 1 month will be prorated by multiplying the number of days of coverage in the partial month by the premium for 1 month divided by the number of days in the month. We believe this approach to prorating to be the fairest for both consumers and issuers because an enrollee will pay for the portion of coverage provided for a partial month.

In this rule, we are finalizing amendments to § 155.705(b)(6) that were originally proposed in the Program Integrity proposed rule published in the June 19, 2013 **Federal Register** (78 FR 37032) to establish that SHOPs must require all issuers to make any changes to rates at a uniform time that is no more frequently than quarterly, as is the case small-group-market-wide. The finalized amendments would also provide that issuers participating in the FF–SHOPs with the maximum amount of flexibility permitted under the

[57] Brook, Robert H., John E. Ware, William H. Rogers, Emmett B. Keeler, Allyson Ross Davies, Cathy D. Sherbourne, George A. Goldberg, Kathleen N. Lohr, Patricia Camp and Joseph P. Newhouse. *The Effect of Coinsurance on the Health of Adults: Results from the RAND Health Insurance Experiment.* Santa Monica, CA: RAND Corporation, 1984. Available at: *http://www.rand.org/pubs/reports/R3055.*

[58] Available at: *http://cciio.cms.gov/resources/files/Files2/03162012/hie3r-ria-032012.pdf.*

market-wide rules and the amendment to § 155.705(b)(6)(i), standardize the effective dates for rate updates in the FF–SHOPs, and provide that FF–SHOP issuers must submit rates to HHS 60 days in advance of the effective date. Consistent with technical guidance provided to issuers through the Health Insurance Oversight System on April 8, 2013, issuers will be able to submit updated quarterly rates for the FF–SHOPs no sooner than for the third quarter of 2014, due to current system limitations. This provision is being finalized at § 156.705(b)(6)(i) and (i)(A), leaving current § 155.705(b)(6)(ii) in place, as we did not intend to replace it.

We also are amending § 155.705(b)(11) to provide additional flexibility with respect to an employer's ability to define a percentage contribution toward premiums under the employer selected reference plan in the FF–SHOPs. Although we proposed and rejected a similar approach in the 2014 Payment Notice because we concluded it was inconsistent with the uniformity provisions established in Internal Revenue Service Notice 2010–82, which require employers to contribute a uniform percentage to employee premiums in order to claim a small business tax credit, we believe small employers are best able to determine whether offering different contribution levels are in the best interest of the business and its employees. We believe that this additional flexibility will bring the FF–SHOPs more in line with current small group market practices and provide an additional incentive for small employers to participate in the FF–SHOPs. Additionally, we believe that providing a mechanism that allows different contribution levels based on full-time or non-full-time status may encourage some employers to offer coverage to non-full-time employees. While we are finalizing this provision as proposed, we note that this option is not expected to become available in the FF–SHOPs until sometime after January 1, 2015.

In this rule, we amend § 155.715 to provide SHOP eligibility adjustment periods for both employers and employees only when there is an inconsistency between information provided by an applicant and information collected through optional verification methods under § 155.715(c)(2), rather than when an employer submits information on the SHOP single employer application that is inconsistent with the eligibility standards described in § 155.710 or when the SHOP receives information on the employee's application that is inconsistent with the information provided by the employer, as current paragraph § 155.715(d) provides. We also amend paragraph (c)(4) to replace a reference to sections 1411(b)(2) and (c) of the Affordable Care Act with a reference to Subpart D of 45 CFR part 155, and to add a reference to eligibility verifications as well as to eligibility determinations. The changes as finalized in this rule will prohibit a SHOP from performing any individual market Exchange eligibility determinations or verifications as described in Subpart D, which, for example, includes making eligibility determinations for advance payments of the premium tax credit and cost sharing reductions in the individual market Exchange.

In § 155.730 we provide that SHOPs are not permitted to collect information from applicants, employers, or employees that is not necessary to determine SHOP eligibility or effectuate enrollment through a SHOP. Limiting the information required of an applicant helps to protect consumer privacy and promote efficiency and streamlining of the SHOP application process.

In § 155.220, we establish that for plan years beginning on or after January 1, 2015 SHOPs, in States that permit this activity under State law, may permit enrollment in a SHOP QHP through the Internet Web site of an agent or broker under the standards set forth in § 155.220(c)(3). Permitting an employer to complete QHP selection through the Internet Web site of an agent or broker is an additional potential enrollment channel that would provide small employers with another avenue to the SHOPs. While we are finalizing this provision as proposed, we do not expect that FF–SHOPs will offer this option in 2015. For clarity, we are making the technical change to add a title to § 155.220(i) to say, "*Use of agents' and brokers' Internet Web sites for SHOP.*"

In § 156.285 of this rule as finalized, we establish that when premium aggregation becomes available in FF–SHOPs for plan years beginning on or after January 1, 2015, if an issuer does not receive an enrollment cancellation transaction from the FF–SHOP, it should effectuate coverage even if the issuer would not receive an employer's initial premium payment from the FF–SHOP prior to the coverage effective date. We also establish that a qualified employer in the SHOP that becomes a large employer, regardless of whether the QHP being sold through the SHOP is sold in the small group market or the large group market, will continue to be rated as a small employer and that issuers cannot offer composite premiums in the FF–SHOPs when employee choice becomes available and an employer offers employees a level of coverage rather than a single plan. Furthermore, we establish that when employee choice is offered in the FF–SHOPs, composite premiums will not be allowed when the employer elects to offer its employees all plans in an actuarial value (or metal tier) selected by the employer, and we extend this limitation to SADP issuers when employers offer employees a choice of all SADPs at a dental AV level.

We do not expect the policies as finalized in this rule and related to the SHOP to create any new significant costs for small businesses, employees, or the FF–SHOPs.

Patient Safety

The patient safety requirements established in this final rule will be implemented in phases, to ensure that QHP issuers contract with hospitals that meet adequate safety and quality standards. The final rule requires QHP issuers to collect and maintain CCNs for each of its contracted hospitals that are certified for more than 50 beds. It also requires that this documentation, if requested by the Exchange, be submitted in a form and manner specified by the Exchange. QHP issuers already have established procedures and relationships to contract with hospitals including obtaining hospital identification information. Therefore, HHS believes that there will not be a significant additional cost for a QHP issuer to collect and maintain CCNs. QHP issuers will incur costs to submit this information, if requested, to the Exchange. We discuss the burden associated with submitting this information in the Collection of Information section of this final rule.

D. Regulatory Alternatives Considered

We considered a number of alternatives to our approach to program integrity for the premium stabilization programs. For example, although we finalized in previous rulemaking our framework for the risk adjustment data validation program to be used when we operate risk adjustment on behalf of a State, the preamble to this rule as proposed discussed and sought comment on a number of alternative approaches to the detailed methodology made final in this rule. For example, we suggested a number of options for confidence intervals and whether to use tests of statistical significance in determining plan average risk score adjustments. We also suggested an expedited second validation audit

approach to permit more time for inter-auditor discussions and appeals. We suggested a number of ways to calculate a default risk adjustment charge for an issuer that fails to provide initial validation audits.

In the preamble discussion of our proposed modifications to the risk adjustment methodology, we considered not providing for an induced demand adjustment for Medicaid expansion plan variations, but we believe that not doing so would underestimate the riskiness of those plans, potentially leading to higher premiums for those plans.

In § 153.270, we establish in this rule that HHS may audit State-operated reinsurance programs to ensure appropriate use of Federal funds. We also considered not proposing that HHS have such authority. However, we believe that because HHS will collect reinsurance contributions and because a State's issuers' reinsurance requests affect the availability of reinsurance funds for issuers in other States, we think it is critical for HHS to have the authority to perform these audits, so that issuers and States are confident that they will receive the correct allocation of the reinsurance payments. We also considered proposing that HHS have the authority to audit a State-operated risk adjustment program. However, we decided not to do so because those programs do not take in Federal funds and those programs have little impact on the health insurance markets in other States.

In the preamble discussion of the 2015 reinsurance payment parameters, we also considered, when setting forth the proposed 2015 reinsurance payment parameters, a set of different uniform reinsurance payment parameters, but believe those alternative uniform reinsurance payment parameters would have unduly raised the complexity of estimating the effects of reinsurance for issuers.

As detailed in the preamble discussion regarding our proposed approach to estimating cost-sharing reduction amounts in connection with reinsurance calculations, we considered a number of alternative approaches to this estimation. Finally, we considered a number of different approaches to the discrepancy and administrative appeals process proposed in § 153.710 and § 156.1220. Some of these approaches would have provided for lengthier and more formal administrative appeals processes, including for advance payments of the premium tax credit, advance payment for cost-sharing reductions, and FFE user fees in 2014. We did not adopt that approach for these 2014 programs, and instead rely on operational discrepancy reports and one-level of administrative appeals—a request for reconsideration—because we believe that this approach will be simpler and less expensive, and will permit operations specialists, issuers and HHS to resolve most problems more quickly. We considered relying solely on a simpler operational discrepancy report process for the premium stabilization programs and cost-sharing reductions reconciliation in 2015, but decided that due to the complexity of the calculations involved in these programs and the potential magnitude of the payment flows, issuers would prefer that these calculations be subject to more formal administrative processes.

Multiple alternatives were considered to the proposed SHOP approaches, and these are discussed in detail above.

We considered requiring QHP issuers to only contract with hospitals that have agreements with one of the 79 listed PSOs; however, as we stated in preamble, this could result in a shortage of qualified hospitals and providers available for contracting with QHPs. We also considered establishing exceptions for hospitals and QHP issuers to these requirements. However, we believe that the phase in approach for implementing these requirements effectively balances the priorities for making quality health care accessible and safe in the Exchanges.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the final rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic 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 not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of "small entity." HHS uses a change in revenues of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities.

In this final rule, we provide provisions for the risk adjustment, reinsurance, and risk corridors programs, which are intended to stabilize premiums as insurance market reforms are implemented and Exchanges facilitate increased enrollment. Because we believe that insurance companies offering comprehensive health insurance policies generally exceed the size thresholds for "small entities" established by the SBA, we do not believe that an initial regulatory flexibility analysis is required for such firms.

For purposes of the RFA, we expect the following types of entities to be affected by this proposed rule:

- Health insurance issuers.
- Group health plans.
- Reinsurance entities.

We believe that health insurance issuers and group health plans would be classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $35.5 million or less would be considered small entities for these NAICS codes. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $30 million or less.

In this final rule, we establish requirements for employers that choose to participate in a SHOP Exchange. Coverage through the SHOPs is limited by statute to small employers, which the statute defines as employers who employed on average at least one but not more than 100 employees in a given plan year. For plan years beginning before January 1, 2016, the statute also provides that states may elect to define a small employer as having at least one but not more than 50 employees, on average, in a given plan year. For this reason, we expect that many employers who would be affected by the rule would meet the SBA standard for small entities. We do not believe that the provisions in this final rule impose requirements on employers offering health insurance through the SHOP that are more restrictive than the current requirements on small employers offering employer-sponsored insurance. Additionally, as discussed in the RIA, we believe the policy will provide greater choice for both employees and employers. We believe the processes that we have established constitute the minimum requirements necessary to implement the SHOP program and accomplish our policy goals, and that no appropriate regulatory alternatives could be developed to further lessen the compliance burden.

We believe that a substantial number of sponsors of self-insured group health plans could qualify as "small entities." This rule provides HHS with the authority to audit these entities. However, we do not believe that the burden of these audits is likely to reflect

more than 3 to 5 percent of such an entity's revenues.

F. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. Although we have not been able to quantify the user fees that will be associated with this final rule, the combined administrative cost and user fee impact on State, local, or Tribal governments and the private sector may be above the threshold. Earlier portions of this RIA constitute our UMRA analysis.

G. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications. Because States have flexibility in designing their Exchange and Exchange-related programs, State decisions will ultimately influence both administrative expenses and overall premiums. States are not required to establish an Exchange or risk adjustment or reinsurance program. For States electing to operate an Exchange, risk adjustment, or reinsurance, much of the initial cost of creating these programs will be funded by Exchange Planning and Establishment Grants. After establishment, Exchanges will be financially self-sustaining, with revenue sources at the discretion of the State. Current State Exchanges charge user fees to issuers.

In HHS's view, while this final rule does not impose substantial direct requirement costs on State and local governments, this regulation has Federalism implications due to direct effects on the distribution of power and responsibilities among the State and Federal governments relating to determining standards relating to health insurance that is offered in the individual and small group markets. Each State electing to establish an Exchange must adopt the Federal standards contained in the Affordable Care Act and in this final rule, or have in effect a State law or regulation that implements these Federal standards. However, HHS anticipates that the Federalism implications (if any) are substantially mitigated because under the statute, States have choices regarding the structure and governance of their Exchanges and risk adjustment and reinsurance programs. Additionally, the Affordable Care Act does not require States to establish these programs; if a State elects not to establish any of these programs or is not approved to do so, HHS must establish and operate the programs in that State.

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, HHS has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with State insurance officials on an individual basis.

Throughout the process of developing this final rule, HHS has attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide access to Affordable Insurance Exchanges for consumers in every State. By doing so, it is HHS's view that we have complied with the requirements of Executive Order 13132.

H. Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller General for review.

List of Subjects

45 CFR Part 144

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

45 CFR Part 153

Administrative practice and procedure, Adverse selection, Health care, Health insurance, Health records, Organization and functions (Government agencies), Premium stabilization, Reporting and recordkeeping requirements, Reinsurance, Risk adjustment, Risk corridors, Risk mitigation, State and local governments.

45 CFR Part 155

Administrative practice and procedure, Health care access, Health insurance, Reporting and recordkeeping requirements, State and local governments, Cost-sharing reductions, Advance payments of premium tax credit, Administration and calculation of advance payments of the premium tax credit, Plan variations, Actuarial value.

45 CFR Part 156

Administrative appeals, Administrative practice and procedure, Administration and calculation of advance payments of premium tax credit, Advertising, Advisory Committees, Brokers, Conflict of interest, Consumer protection, Cost-sharing reductions, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, American Indian/Alaska Natives, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Payment and collections reports, Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, and Youth.

45 CFR Part 158

Administrative practice and procedure, Claims, Health care, Health insurance, Health plans, penalties, Reporting and recordkeeping requirements, Premium revenues, Medical loss ratio, Rebating.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR parts 144, 147, 153, 155, 156, and 158 as set forth below:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

■ 1. The authority citation for part 144 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act, 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92.

■ 2. Section 144.103 is amended by revising the first sentence in paragraph

(1) of the definition of "Policy year" to read as follows:

§ 144.103 Definitions.

* * * * *

Policy year * * *

(1) A grandfathered health plan offered in the individual health insurance market and student health insurance coverage, the 12-month period that is designated as the policy year in the policy documents of the health insurance coverage. * * *

* * * * *

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 3. The authority citation for part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 4. Section 147.102 is amended by revising paragraph (c)(3) to read as follows:

§ 147.102 Fair health insurance premiums.

* * * * *

(c) * * *

(3) *Application to small group market*—(i) In the case of the small group market, the total premium charged to a group health plan is determined by summing the premiums of covered participants and beneficiaries in accordance with paragraph (c)(1) or (2) of this section, as applicable.

(ii) Subject to paragraph (c)(3)(iii) of this section, nothing in this section prevents a state from requiring issuers to offer to a group health plan, or an issuer from voluntarily offering to a group health plan, premiums that are based on average enrollee premium amounts, provided that the total group premium established at the time of applicable enrollment at the beginning of the plan year is the same total amount derived in accordance with paragraph (c)(1) or (2) of this section, as applicable.

(iii) Effective for plan years beginning on or after January 1, 2015, an issuer that, in connection with a group health plan in the small group market, offers premiums that are based on average enrollee premium amounts under paragraph (c)(3)(ii) of this section must—

(A) Ensure an average enrollee premium amount calculated based on applicable enrollment of participants and beneficiaries at the beginning of the plan year does not vary during the plan year.

(B) Unless a state establishes and CMS approves an alternate rating methodology, calculate an average enrollee premium amount for covered individuals age 21 and older, and calculate an average enrollee premium amount for covered individuals under age 21. The premium for a given family composition is determined by summing the average enrollee premium amount applicable to each family member covered under the plan, taking into account no more than three covered children under age 21.

(C) Pursuant to applicable state law, ensure that the average enrollee premium amount calculated for any individual covered under the plan does not include any rating variation for tobacco use permitted under paragraph (a)(1)(iv) of this section. The rating variation for tobacco use permitted under paragraph (a)(1)(iv) of this section is determined based on the premium rate that would be applied on a per-member basis with respect to an individual who uses tobacco and then included in the premium charged for that individual.

(D) To the extent permitted by applicable state law and, in the case of coverage offered through a Federally-facilitated SHOP, as permitted by § 156.285(a)(4) of this subchapter, apply this paragraph (c)(3)(iii) uniformly among group health plans enrolling in that product, giving those group health plans the option to pay premiums based on average enrollee premium amounts.

* * * * *

■ 5. Section 147.145 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 147.145 Student health insurance coverage.

* * * * *

(b) * * *

(1) * * *

(ii) For purposes of section 2702 of the Public Health Service Act, a health insurance issuer that offers student health insurance coverage is not required to accept individuals who are not students or dependents of students in such coverage, and, notwithstanding the requirements of § 147.104(b), is not required to establish open enrollment periods or coverage effective dates that are based on a calendar policy year or to offer policies on a calendar year basis.

* * * * *

PART 153—STANDARDS RELATED TO REINSURANCE, RISK CORRIDORS, AND RISK ADJUSTMENT UNDER THE AFFORDABLE CARE ACT

■ 6. The authority citation for part 153 continues to read as follows:

Authority: Secs. 1311, 1321, 1341–1343, Pub. L. 111–148, 24 Stat. 119.

■ 7. Section 153.20 is amended by revising the definition of "contributing entity" and adding in alphabetical order a definition of "major medical coverage" to read as follows:

§ 153.20 Definitions.

* * * * *

Contributing entity means—

(1) A health insurance issuer; or

(2) For the 2014 benefit year, a self-insured group health plan (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage), whether or not it uses a third party administrator; and for the 2015 and 2016 benefit years, a self-insured group health plan (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage) that uses a third party administrator in connection with claims processing or adjudication (including the management of internal appeals) or plan enrollment for services other than for pharmacy benefits or excepted benefits within the meaning of section 2791(c) of the PHS Act. Notwithstanding the foregoing, a self-insured group health plan that uses an unrelated third party to obtain provider network and related claim repricing services, or uses an unrelated third party for up to 5 percent of claims processing or adjudication or plan enrollment, will not be deemed to use a third party administrator, based on either the number of transactions processed by the third party, or the volume of the claims processing and adjudication and plan enrollment services provided by the third party. A self-insured group health plan that is a contributing entity is responsible for the reinsurance contributions, although it may elect to use a third party administrator or administrative services-only contractor for transfer of the reinsurance contributions.

* * * * *

Major medical coverage means, for purposes only of the requirements related to reinsurance contributions under section 1341 of the Affordable Care Act, a catastrophic plan, an individual or a small group market plan subject to the actuarial value requirements under § 156.140 of this subchapter, or health coverage for a broad range of services and treatments provided in various settings that

provides minimum value as defined in § 156.145 of this subchapter.

* * * * *

■ 8. Section 153.230 is amended by revising paragraph (d) to read as follows:

§ 153.230 Calculation of reinsurance payments made under the national contribution rate.

* * * * *

(d) *Uniform adjustment to national reinsurance payments.* If HHS determines that all reinsurance payments requested under the national payment parameters from all reinsurance-eligible plans in all States for a benefit year will not be equal to the amount of all reinsurance contributions collected for reinsurance payments under the national contribution rate in all States for an applicable benefit year, HHS will determine a uniform pro rata adjustment to be applied to all such requests for reinsurance payments for all States. Each applicable reinsurance entity, or HHS on behalf of a State, must reduce or increase the reinsurance payment amounts for the applicable benefit year by any adjustment required under this paragraph (d).

■ 9. Section 153.270 is added to subpart C to read as follows:

§ 153.270 HHS audits of State-operated reinsurance programs.

(a) *Audits.* HHS or its designee may conduct a financial and programmatic audit of a State-operated reinsurance program to assess compliance with the requirements of this subpart or subpart B of this part. A State that establishes a reinsurance program must ensure that its applicable reinsurance entity and any relevant contractors, subcontractors, or agents cooperate with any audit under this section.

(b) *Action on audit findings.* If an audit results in a finding of material weakness or significant deficiency with respect to compliance with any requirement of this subpart or subpart B, the State must ensure that the applicable reinsurance entity:

(1) Within 60 calendar days of the issuance of the final audit report, provides a written corrective action plan to HHS for approval;

(2) Implements that plan; and

(3) Provides to HHS written documentation of the corrective actions once taken.

■ 10. Section 153.400 is amended by revising paragraph (a)(1) introductory text and adding paragraphs (a)(1)(v) and (vi) to read as follows:

§ 153.400 Reinsurance contribution funds.

(a) * * *

(1) In general, reinsurance contributions are required for major medical coverage that is considered to be part of a commercial book of business, but are not required to be paid more than once with respect to the same covered life. In order to effectuate that principle, a contributing entity must make reinsurance contributions for lives covered by its self-insured group health plans and health insurance coverage except to the extent that:

* * * * *

(v) Such plan or coverage applies to individuals with primary residence in a territory that does not operate a reinsurance program.

(vi) In the case of employer-provided group health coverage:

(A) Such coverage applies to individuals with individual market health insurance coverage for which reinsurance contributions are required; or

(B) Such coverage is supplemental or secondary to group health coverage for which reinsurance contributions must be made for the same covered lives.

* * * * *

■ 11. Section 153.405 is amended by revising paragraphs (c) and (e)(3) and adding paragraph (i) to read as follows:

§ 153.405 Calculation of reinsurance contributions.

* * * * *

(c) *Notification and payment.* (1) Following submission of the annual enrollment count described in paragraph (b) of this section, HHS will notify the contributing entity of the reinsurance contribution amount allocated to reinsurance payments and administrative expenses to be paid for the applicable benefit year.

(2) In the fourth quarter of the calendar year following the applicable benefit year, HHS will notify the contributing entity of the portion of the reinsurance contribution amount allocated for payments to the U.S. Treasury for the applicable benefit year.

(3) A contributing entity must remit reinsurance contributions to HHS within 30 days after the date of a notification.

* * * * *

(e) * * *

(3) Using the number of lives covered for the most current plan year calculated based upon the "Annual Return/Report of Employee Benefit Plan" filed with the Department of Labor (Form 5500) for the last applicable time period. For purposes of this paragraph (e)(3), the number of lives covered for the plan year for a plan offering only self-only coverage equals the sum of the total participants covered at the beginning and end of the plan year, as reported on the Form 5500, divided by 2, and the number of lives covered for the plan year for a plan offering self-only coverage and coverage other than self-only coverage equals the sum of the total participants covered at the beginning and the end of the plan year, as reported on the Form 5500.

* * * * *

(i) *Audits.* HHS or its designee may audit a contributing entity to assess its compliance with the requirements of this subpart.

■ 12. Section 153.410 is amended by adding paragraph (d) to read as follows:

§ 153.410 Requests for reinsurance payment.

* * * * *

(d) *Audits.* HHS or its designee may audit an issuer of a reinsurance-eligible plan to assess its compliance with the requirements of this subpart and subpart H of this part. The issuer must ensure that its relevant contractors, subcontractors, or agents cooperate with any audit under this section. If an audit results in a finding of material weakness or significant deficiency with respect to compliance with any requirement of this subpart or subpart H, the issuer must complete all of the following:

(1) Within 30 calendar days of the issuance of the final audit report, provide a written corrective action plan to HHS for approval.

(2) Implement that plan.

(3) Provide to HHS written documentation of the corrective actions once taken.

■ 13. Section 153.500 is amended by revising the definitions of "allowable administrative costs" and "profits" and adding in alphabetical order definitions for "adjustment percentage" and "transitional State" to read as follows:

§ 153.500 Definitions.

* * * * *

Adjustment percentage means, with respect to a QHP:

(1) For benefit year 2014, for a QHP offered by a health insurance issuer with allowable costs of at least 80 percent of after-tax premium in a transitional State, the percentage specified by HHS for such QHPs in the transitional State; and otherwise

(2) Zero percent.

* * * * *

Allowable administrative costs mean, with respect to a QHP, the sum of administrative costs of the QHP, other than taxes and regulatory fees, plus profits earned by the QHP, which sum is limited to the sum of 20 percent and

the adjustment percentage of after-tax premiums earned with respect to the QHP (including any premium tax credit under any governmental program), plus taxes and regulatory fees.

* * * * *

Profits mean, with respect to a QHP, the greater of:

(1) The sum of three percent and the adjustment percentage of after-tax premiums earned; and

(2) Premiums earned of the QHP minus the sum of allowable costs and administrative costs of the QHP.

* * * * *

Transitional State means a State that does not enforce compliance with §§ 147.102, 147.104, 147.106, 147.150, 156.80, or subpart B of part 156 of this subchapter for individual market and small group health plans that renew for a policy year starting between January 1, 2014, and October 1, 2014, in accordance with the transitional policy outlined in the CMS letter dated November 14, 2013.

■ 14. Section 153.510 is amended by adding paragraph (f) to read as follows:

§ 153.510 Risk corridors establishment and payment methodology.

* * * * *

(f) *Eligibility under health insurance market rules.* The provisions of this subpart apply only for plans offered by a QHP issuer in the SHOP or the individual or small group market, as determined according to the employee counting method applicable under State law, that are subject to the following provisions: §§ 147.102, 147.104, 147.106, 147.150, 156.80, and subpart B of part 156 of this subchapter.

■ 15. Section 153.530 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 153.530 Risk corridors data requirements.

* * * * *

(d) *Timeframes.* For each benefit year, a QHP issuer must submit all information required under paragraphs (a) through (c) of this section by July 31 of the year following the benefit year.

(e) *Requirement to submit enrollment data for risk corridors adjustment.* A health insurance issuer in the individual or small group market of a transitional State must submit, in a manner and timeframe specified by HHS, the following:

(1) A count of its total enrollment in the individual market and small group market; and

(2) A count of its total enrollment in individual market and small group market policies that meet the criteria for transitional policies outlined in the CMS letter dated November 14, 2013.

■ 16. Section 153.540 is added to subpart F to read as follows:

§ 153.540 Compliance with risk corridors standards.

HHS or its designee may audit a QHP issuer to assess its compliance with the requirements of this subpart. HHS will conduct an audit in accordance with the procedures set forth in § 158.402(a) through (e) of this subchapter.

■ 17. Section 153.620 is amended by adding paragraph (c) to read as follows:

§ 153.620 Compliance with risk adjustment standards.

* * * * *

(c) *Audits.* HHS or its designee may audit an issuer of a risk adjustment covered plan to assess its compliance with the requirements of this subpart and subpart H of this part. The issuer must ensure that its relevant contractors, subcontractors, or agents cooperate with any audit under this section. If an audit results in a finding of material weakness or significant deficiency with respect to compliance with any requirement of this subpart or subpart H of this part, the issuer must complete all of the following:

(1) Within 30 calendar days of the issuance of the final audit report, provide a written corrective action plan to HHS for approval.

(2) Implement that plan.

(3) Provide to HHS written documentation of the corrective actions once taken.

■ 18. Section 153.630 is amended by revising paragraph (b)(1) and adding paragraphs (b)(5) through (10) to read as follows:

§ 153.630 Data validation requirements when HHS operates risk adjustment.

* * * * *

(b) * * *

(1) An issuer of a risk adjustment covered plan must engage one or more independent auditors to perform an initial validation audit of a sample of its risk adjustment data selected by HHS. The issuer must provide HHS with the identity of the initial validation auditor, and must attest to the absence of conflicts of interest between the initial validation auditor (or the members of its audit team, owners, directors, officers, or employees) and the issuer (or its owners, directors, officers, or employees), to its knowledge, following reasonable investigation, and must attest that it has obtained an equivalent representation from the initial validation auditor, in a timeframe and manner to be specified by HHS.

* * * * *

(5) An initial validation audit must be conducted by medical coders certified as such and in good standing by a nationally recognized accrediting agency.

(6) An issuer must provide the initial validation auditor and the second validation auditor with all relevant source enrollment documentation, all claims and encounter data, and medical record documentation from providers of services to each enrollee in the applicable sample without unreasonable delay and in a manner that reasonably assures confidentiality and security in transmission.

(7) The risk score of each enrollee in the sample must be validated by—

(i) Validating the enrollee's enrollment data and demographic data in a manner to be determined by HHS.

(ii) Validating enrollee health status through review of all relevant medical record documentation. Medical record documentation must originate from the provider of the services and align with dates of service for the medical diagnoses, and reflect permitted providers and services. For purposes of this section, "medical record documentation" means clinical documentation of hospital inpatient or outpatient treatment or professional medical treatment from which enrollee health status is documented and related to accepted risk adjustment services that occurred during a specified period of time. Medical record documentation must be generated under a face-to-face or telehealth visit documented and authenticated by a permitted provider of services;

(iii) Validating medical records according to industry standards for coding and reporting; and

(iv) Having a senior reviewer confirm any enrollee risk adjustment error discovered during the initial validation audit. For purposes of this section, a "senior reviewer" is a reviewer certified as a medical coder by a nationally recognized accrediting agency who possesses at least 5 years of experience in medical coding. However, for validation of risk adjustment data for the 2014 and 2015 benefit years, a senior reviewer may possess 3 or more years of experience.

(8) The initial validation auditor must measure and report to the issuer and HHS, in a manner and timeframe specified by HHS, its inter-rater reliability rates among its reviewers. The initial validation auditor must achieve a consistency measure of at

least 95 percent for his or her review outcomes. However, for validation of risk adjustment data for the 2014 and 2015 benefit years, the initial validation auditor may meet an inter-rater reliability standard of 85 percent for review outcomes.

(9) Enforcement actions. If an issuer of a risk adjustment covered plan fails to engage an initial validation auditor or to submit the results of an initial validation audit to HHS, HHS may impose civil money penalties in accordance with the procedures set forth in § 156.805 of this subchapter.

(10) Default data validation charge. If an issuer of a risk adjustment covered plan fails to engage an initial validation auditor or to submit the results of an initial validation audit to HHS, HHS will impose a default risk adjustment charge.

* * * * *

■ 19. Section 153.710 is amended by adding paragraphs (d), (e), (f), and (g) to read as follows:

§ 153.710 Data requirements.

* * * * *

(d) *Interim dedicated distributed data environment reports.* Within 30 calendar days of the date of an interim dedicated distributed data environment report from HHS, the issuer must, in a format specified by HHS, either:

(1) Confirm to HHS that the information in the interim report accurately reflects the data to which the issuer has provided access to HHS through its dedicated distributed data environment in accordance with § 153.700(a) for the timeframe specified in the report; or

(2) Describe to HHS any discrepancy it identifies in the interim dedicated distributed data environment report.

(e) *Final dedicated distributed data environment report.* Within 15 calendar days of the date of the final dedicated distributed data environment report from HHS, the issuer must, in a format specified by HHS, either:

(1) Confirm to HHS that the information in the final report accurately reflects the data to which the issuer has provided access to HHS through its dedicated distributed data environment in accordance with § 153.700(a) for the benefit year specified in the report; or

(2) Describe to HHS any discrepancy it identifies in the final dedicated distributed data environment report.

(f) *Unresolved discrepancies.* If a discrepancy first identified in an interim or final dedicated distributed data environment report in accordance with paragraphs (d)(2) or (e)(2) of this section remains unresolved after the issuance of the notification of risk adjustment payments and charges or reinsurance payments under § 153.310(e) or § 153.240(b)(1)(ii), respectively, an issuer of a risk adjustment covered plan or reinsurance-eligible plan may make a request for reconsideration regarding such discrepancy under the process set forth in § 156.1220(a) of this subchapter.

(g) *Risk corridors and MLR reporting.* (1) Notwithstanding any discrepancy report made under paragraph (d)(2) or (e)(2) of this section, or any request for reconsideration under § 156.1220(a) of this subchapter with respect to any risk adjustment payment or charge, including an assessment of risk adjustment user fees; reinsurance payment; cost-sharing reconciliation payment or charge; or risk corridors payment or charge, unless the dispute has been resolved, an issuer must report, for purposes of the risk corridors and MLR programs:

(i) The risk adjustment payment to be made or charge assessed, including an assessment of risk adjustment user fees, by HHS in the notification provided under § 153.310(e);

(ii) The reinsurance payment to be made by HHS in the notification provided under § 153.240(b)(1)(ii);

(iii) A cost-sharing reduction amount equal to the amount of the advance payments of cost-sharing reductions paid to the issuer by HHS for the benefit year; and

(iv) For medical loss ratio report only, the risk corridors payment to be made or charge assessed by HHS as reflected in the notification provided under § 153.510(d).

(2) An issuer must report any adjustment made following any discrepancy report made under paragraph (d)(2) or (e)(2) of this section, or any request for reconsideration under § 156.1220(a) of this subchapter with respect to any risk adjustment payment or charge, including an assessment of risk adjustment user fees; reinsurance payment; cost-sharing reconciliation payment or charge; or risk corridors payment or charge; or following any audit, where such adjustment has not be accounted for in a prior risk corridors or medical loss ratio report, in the next following risk corridors or medical loss ratio report.

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 20. Authority citation for part 155 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1332, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083).

■ 21. Section 155.106 is amended by revising paragraph (a)(2) to read as follows:

§ 155.106 Election to operate an Exchange after 2014.

(a) * * *

(2) Have in effect an approved, or conditionally approved, Exchange Blueprint and operational readiness assessment at least 6.5 months prior to the Exchange's first effective date of coverage; and

* * * * *

■ 22. Section 155.220 is amended by adding paragraph (i) to read as follows:

§ 155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

* * * * *

(i) *Use of agents' and brokers' Internet Web sites for SHOP.* For plan years beginning on or after January 1, 2015, in States that permit this activity under State law, a SHOP may permit agents and brokers to use an Internet Web site to assist qualified employers and facilitate enrollment of qualified employees in a QHP through the Exchange, under paragraph (c)(3) of this section.

■ 23. Section 155.260 is amended by revising paragraphs (a)(1) and (2) and (b) to read as follows:

§ 155.260 Privacy and security of personally identifiable information.

(a) * * *

(1) Where the Exchange creates or collects personally identifiable information for the purposes of determining eligibility for enrollment in a qualified health plan; determining eligibility for other insurance affordability programs, as defined in § 155.20; or determining eligibility for exemptions from the individual responsibility provisions in section 5000A of the Code, the Exchange may only use or disclose such personally identifiable information to the extent such information is necessary:

(i) For the Exchange to carry out the functions described in § 155.200;

(ii) For the Exchange to carry out other functions not described in paragraph (a)(1)(i) of this section, which the Secretary determines to be in compliance with section 1411(g)(2)(A) of the Affordable Care Act and for

which an individual provides consent for his or her information to be used or disclosed; or

(iii) For the Exchange to carry out other functions not described in paragraphs (a)(1)(i) and (ii) of this section, for which an individual provides consent for his or her information to be used or disclosed, and which the Secretary determines are in compliance with section 1411(g)(2)(A) of the Affordable Care Act under the following substantive and procedural requirements:

(A) *Substantive requirements.* The Secretary may approve other uses and disclosures of personally identifiable information created or collected as described in paragraph (a)(1) of this section that are not described in paragraphs (a)(1)(i) or (ii) of this section, provided that HHS determines that the information will be used only for the purposes of and to the extent necessary in ensuring the efficient operation of the Exchange consistent with section 1411(g)(2)(A) of the Affordable Care Act, and that the uses and disclosures are also permissible under relevant law and policy.

(B) *Procedural requirements for approval of a use or disclosure of personally identifiable information.* To seek approval for a use or disclosure of personally identifiable information created or collected as described in paragraph (a)(1) of this section that is not described in paragraphs (a)(1)(i) or (ii) of this section, the Exchange must submit the following information to HHS:

(*1*) Identity of the Exchange and appropriate contact persons;

(*2*) Detailed description of the proposed use or disclosure, which must include, but not necessarily be limited to, a listing or description of the specific information to be used or disclosed and an identification of the persons or entities that may access or receive the information;

(*3*) Description of how the use or disclosure will ensure the efficient operation of the Exchange consistent with section 1411(g)(2)(A) of the Affordable Care Act; and

(*4*) Description of how the information to be used or disclosed will be protected in compliance with privacy and security standards that meet the requirements of this section or other relevant law, as applicable.

(2) The Exchange may not create, collect, use, or disclose personally identifiable information unless the creation, collection, use, or disclosure is consistent with this section.

* * * * *

(b) *Application to non-Exchange entities.* (1) *Non-Exchange entities.* A non-Exchange entity is any individual or entity that:

(i) Gains access to personally identifiable information submitted to an Exchange; or

(ii) Collects, uses, or discloses personally identifiable information gathered directly from applicants, qualified individuals, or enrollees while that individual or entity is performing functions agreed to with the Exchange.

(2) Prior to any person or entity becoming a non-Exchange entity, Exchanges must execute with the person or entity a contract or agreement that includes:

(i) A description of the functions to be performed by the non-Exchange entity;

(ii) A provision(s) binding the non-Exchange entity to comply with the privacy and security standards and obligations adopted in accordance with paragraph (b)(3) of this section, and specifically listing or incorporating those privacy and security standards and obligations;

(iii) A provision requiring the non-Exchange entity to monitor, periodically assess, and update its security controls and related system risks to ensure the continued effectiveness of those controls in accordance with paragraph (a)(5) of this section;

(iv) A provision requiring the non-Exchange entity to inform the Exchange of any change in its administrative, technical, or operational environments defined as material within the contract; and

(v) A provision that requires the non-Exchange entity to bind any downstream entities to the same privacy and security standards and obligations to which the non-Exchange entity has agreed in its contract or agreement with the Exchange.

(3) When collection, use or disclosure is not otherwise required by law, the privacy and security standards to which an Exchange binds non-Exchange entities must:

(i) Be consistent with the principles and requirements listed in paragraphs (a)(1) through (6) of this section, including being at least as protective as the standards the Exchange has established and implemented for itself in compliance with paragraph (a)(3) of this section;

(ii) Comply with the requirements of paragraphs (c), (d), (f), and (g) of this section; and

(iii) Take into specific consideration:

(A) The environment in which the non-Exchange entity is operating;

(B) Whether the standards are relevant and applicable to the non-Exchange entity's duties and activities in connection with the Exchange; and

(C) Any existing legal requirements to which the non-Exchange entity is bound in relation to its administrative, technical, and operational controls and practices, including but not limited to, its existing data handling and information technology processes and protocols.

* * * * *

■ 24. Section 155.410 is amended by revising paragraphs (e) and (f) to read as follows:

§ 155.410 Initial and annual open enrollment periods.

* * * * *

(e) *Annual open enrollment period.* For the benefit year beginning on January 1, 2015, the annual open enrollment period begins on November 15, 2014, and extends through February 15, 2015.

(f) *Effective date for coverage after the annual open enrollment period.* For the benefit year beginning on January 1, 2015, the Exchange must ensure coverage is effective -

(1) January 1, 2015, for QHP selections received by the Exchange on or before December 15, 2014.

(2) February 1, 2015, for QHP selections received by the Exchange from December 16, 2014 through January 15, 2015.

(3) March 1, 2015, for QHP selections received by the Exchange from January 16, 2015 through February 15, 2015.

* * * * *

■ 25. Section 155.705 is amended by:

■ a. Revising paragraph (b)(1);

■ b. Adding paragraph (b)(3)(v);

■ c. Redesignating paragraph (b)(4)(ii) as (b)(4)(iii);

■ d. Adding new paragraph (b)(4)(ii);

■ e. Revising paragraph (b)(6)(i); and

■ f. Revising paragraph (b)(11)(ii)(C).

The additions and revisions read as follows:

§ 155.705 Functions of a SHOP.

* * * * *

(b) * * *

(1) Enrollment and eligibility functions. The SHOP must adhere to the requirements outlined in Subpart H.

* * * * *

(3) * * *

(v) For plan years beginning on or after January 1, 2015, a Federally-facilitated SHOP will provide a qualified employer a choice of two methods to make stand-alone dental plans available to qualified employees and their dependents:

(A) The employer may choose to make available a single stand-alone dental plan.

(B) The employer may choose to make available all stand-alone dental plans offered through a Federally-facilitated SHOP at a level of coverage as described in § 156.150(b)(2) of this subchapter.

(4) * * *

(ii) The SHOP may establish one or more standard processes for premium calculation, premium payment, and premium collection.

(A) Qualified employers in a Federally-facilitated SHOP must make premium payments according to a timeline and process established by HHS;

(B) For a Federally-facilitated SHOP, the premium for coverage lasting less than 1 month must equal the product of:

(1) The premium for 1 month of coverage divided by the number of days in the month; and

(2) The number of days for which coverage is being provided in the month described in paragraph (b)(4)(ii)(B)(*1*) of this section.

* * * * *

(6) * * *

(i) Require all QHP issuers to make any change to rates at a uniform time that is no more frequently than quarterly.

(A) In a Federally-facilitated SHOP, rates may be updated quarterly with effective dates of January 1, April 1, July 1, or October 1 of each calendar year, beginning with rates effective no sooner than July 1, 2014. The updated rates must be submitted to HHS at least 60 days in advance of the effective date of the rates.

(B) [Reserved]

* * * * *

(11) * * *

(ii) * * *

(C) The employer will define a percentage contribution toward premiums for employee-only coverage under the reference plan and, if dependent coverage is offered, a percentage contribution toward premiums for dependent coverage under the reference plan. To the extent permitted by other applicable law, for plan years beginning on or after January 1, 2015, a Federally-facilitated SHOP may permit an employer to define a different percentage contribution for full-time employees from the percentage contribution it defines for non-full-time employees, and it may permit an employer to define a different percentage contribution for dependent coverage for full-time employees from the percentage contribution it defines for dependent coverage for non-full-time employees.

* * * * *

■ 26. Section 155.715 is amended by revising paragraphs (c)(4), (d)(1) introductory text, and (d)(2) introductory text to read as follows:

§ 155.715 Eligibility determination process for SHOP.

* * * * *

(c) * * *

(4) May not perform individual market Exchange eligibility determinations or verifications described in subpart D of this part.

(d) * * *

(1) When the information submitted on the SHOP single employer application is inconsistent with information collected from third-party data sources through the verification process described in § 155.715(c)(2), the SHOP must–

* * * * *

(2) When the information submitted on the SHOP single employee application is inconsistent with information collected from third-party data sources through the verification process described in § 155.715(c)(2), the SHOP must–

* * * * *

■ 27. Section 155.730 is amended by revising paragraph (g) to read as follows:

§ 155.730 Application standards for SHOP.

(g) *Additional safeguards.* (1) The SHOP may not provide to the employer any information collected on the employee application with respect to spouses or dependents other than the name, address, and birth date of the spouse or dependent.

(2) The SHOP is not permitted to collect information on the single employer or single employee application unless that information is necessary to determine SHOP eligibility or effectuate enrollment through the SHOP.

■ 28. Section 155.1030 is amended by revising paragraphs (b)(1), (3), and (4) to read as follows:

§ 155.1030 QHP certification standards related to advance payments of the premium tax credit and cost-sharing reductions.

* * * * *

(b) * * *

(1) The Exchange must collect and review annually the rate allocation and the actuarial memorandum that an issuer submits to the Exchange under § 156.470 of this subchapter, to ensure that the allocation meets the standards set forth in § 156.470(c) and (d) of this subchapter.

* * * * *

(3) The Exchange must use the methodology specified in the annual HHS notice of benefit and payment parameters to calculate advance payment amounts for cost-sharing reductions, and must transmit the advance payment amounts to HHS, in accordance with § 156.340(a) of this subchapter.

(4) HHS may use the information provided to HHS by the Exchange under this section for oversight of advance payments of cost-sharing reductions and premium tax credits.

* * * * *

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 29. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1312, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, and 1412, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

■ 30. Section 156.135 is amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 156.135 AV calculation for determining level of coverage.

(a) *Calculation of AV.* Subject to paragraphs (b) and (d) of this section, to calculate the AV of a health plan, the issuer must use the AV Calculator developed and made available by HHS for the given benefit year.

* * * * *

(g) *Updates to the AV Calculator.* HHS will update the AV Calculator as follows, HHS will:

(1) Update the annual limit on cost sharing and related functions based on a projected estimate to enable the AV Calculator to comply with § 156.130(a)(2);

(2) Update the continuance tables to reflect more current enrollment data when HHS has determined that the enrolled population has materially changed;

(3) Update the algorithms when HHS has determined the need to adapt the AV Calculator for use by additional plan designs or to allow the AV Calculator to accommodate potential new types of plan designs, where such adaptations can be based on actuarially sound principles and will not have a substantial effect on the AV calculations performed by the then current AV Calculator;

(4) Update the continuance tables to reflect more current claims data no more than every 3 and no less than every 5 years and to annually trend the claims data when the trending factor is more

than 5 percent different, calculated on a cumulative basis; and

(5) Update the AV Calculator user interface when a change would be useful to a broad group of users of the AV Calculator, would not affect the function of the AV Calculator, and would be technically feasible.

■ 31. Section 156.150 is amended by revising paragraph (a) to read as follows:

§ 156.150 Application to stand-alone dental plans inside the Exchange.

(a) *Annual limitation on cost-sharing.* For a stand-alone dental plan covering the pediatric dental EHB under § 155.1065 of this subchapter in any Exchange, cost sharing may not exceed $350 for one covered child and $700 for two or more covered children.

* * * * *

■ 32. Section 156.285 is amended by adding paragraph (a)(4) and revising paragraph (c)(7) to read as follows:

§ 156.285 Additional standards specific to SHOP.

(a) * * *

(4)(i) Adhere to the premium rating standards described in § 147.102 of this subchapter regardless of whether the QHP being sold through the SHOP is sold in the small group market or the large group market; and

(ii) Effective in plan years beginning on or after January 1, 2015, a QHP issuer in a Federally-facilitated SHOP may not offer to an employer premiums that are based on average enrollee premium amounts under § 147.102(c)(3) of this subchapter, if the employer elects to offer coverage to its employees under § 155.705(b)(3)(iv)(A) of this subchapter. This paragraph (a)(4)(ii) also applies to stand-alone dental plans in a Federally-facilitated SHOP, if the employer elects to offer coverage to its employees under § 155.705(b)(3)(v)(B) of this subchapter.

* * * * *

(c) * * *

(7) A QHP issuer must enroll a qualified employee only if the SHOP—

(i) Notifies the QHP issuer that the employee is a qualified employee;

(ii) Transmits information to the QHP issuer as provided in § 155.400(a) of this subchapter; and

(iii) Effective for QHPs offered through a Federally-facilitated SHOP in plan years beginning on or after January 1, 2015, does not send a cancellation notice to the QHP issuer prior to the effective date of coverage.

* * * * *

■ 33. Section 156.298 is added to subpart C to read as follows:

§ 156.298 Meaningful difference standard for Qualified Health Plans in the Federally-facilitated Exchanges.

(a) *General.* Subject to paragraph (b)(2) of this section, starting in the 2015 coverage year, in order to be certified as a QHP offered through a Federally-facilitated Exchange, a plan must be meaningfully different from all other QHPs offered by the same issuer of that plan within a service area and level of coverage in the Exchange, as defined in paragraph (b) of this section.

(b) *Meaningful difference standard.* A plan is considered meaningfully different from another plan in the same service area and metal tier (including catastrophic plans) if a reasonable consumer would be able to identify one or more material differences among the following characteristics between the plan and other plan offerings:

(1) Cost sharing;

(2) Provider networks;

(3) Covered benefits;

(4) Plan type;

(5) Health Savings Account eligibility; or

(6) Self-only, non-self-only, or child-only plan offerings.

(c) *Exception for limited plan availability.* If HHS determines that the plan offerings at a particular metal level (including catastrophic plans) within a county are limited, plans submitted for certification in that particular metal level (including catastrophic plans) within that county will not be subject to the meaningful difference requirement set forth in paragraph (b) of this section.

(d) *Two-year transition period for issuers with new acquisitions.* During the first 2 years after a merger or acquisition in which an acquiring issuer obtains or merges with another issuer, the FFEs may certify plans as QHPs that were previously offered by the acquired or merged issuer without those plans meeting the meaningful difference standard set forth in paragraph (b) of this section.

■ 34. Section 156.420 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 156.420 Plan variations.

* * * * *

(c) *Benefit and network equivalence in silver plan variations.* A standard silver plan and each silver plan variation thereof must cover the same benefits and providers. Each silver plan variation is subject to all requirements applicable to the standard silver plan (except for the requirement that the plan have an AV as set forth in § 156.140(b)(2)).

(d) *Benefit and network equivalence in zero and limited cost sharing plan variations.* A QHP and each zero cost sharing plan variation or limited cost sharing plan variation thereof must cover the same benefits and providers. The out-of-pocket spending required of enrollees in the zero cost sharing plan variation of a QHP for a benefit that is not an essential health benefit from a provider (including a provider outside the plan's network) may not exceed the corresponding out-of-pocket spending required in the limited cost sharing plan variation of the QHP and the corresponding out-of-pocket spending required in the silver plan variation of the QHP for individuals eligible for cost-sharing reductions under § 155.305(g)(2)(i) of this subchapter, in the case of a silver QHP. The out-of-pocket spending required of enrollees in the limited cost sharing plan variation of the QHP for a benefit that is not an essential health benefit from a provider (including a provider outside the plan's network) may not exceed the corresponding out-of-pocket spending required in the QHP with no cost-sharing reductions. A limited cost sharing plan variation must have the same cost sharing for essential health benefits not described in paragraph (b)(2) of this section as the QHP with no cost-sharing reductions. Each zero cost sharing plan variation or limited cost sharing plan variation is subject to all requirements applicable to the QHP (except for the requirement that the plan have an AV as set forth in § 156.140(b)).

(e) *Decreasing cost sharing and out-of-pocket spending in higher AV silver plan variations.* The cost sharing or out-of-pocket spending required of enrollees under any silver plan variation of a standard silver plan for a benefit from a provider (including a provider outside the plan's network) may not exceed the corresponding cost sharing or out-of-pocket spending required in the standard silver plan or any other silver plan variation thereof with a lower AV.

* * * * *

■ 35. Section 156.430 is amended by removing and reserving paragraph (a) and by revising paragraph (b)(1) to read as follows:

§ 156.430 Payment for cost-sharing reductions.

(b) * * *

(1) A QHP issuer will receive periodic advance payments based on the advance payment amounts calculated in accordance with § 155.1030(b)(3) of this subchapter.

* * * * *

■ 36. Section 156.470 is amended by revising paragraph (a) to read as follows:

§ 156.470 Allocation of rates for advance payments of the premium tax credit.

(a) *Allocation to additional health benefits for QHPs.* An issuer must provide to the Exchange annually for approval, in the manner and timeframe established by HHS, for each health plan at any level of coverage offered, or intended to be offered, in the individual market on an Exchange, an allocation of the rate for the plan to:

(1) EHB, other than services described in § 156.280(d)(1); and

(2) Any other services or benefits offered by the health plan not described in paragraph (a)(1) of this section.

* * * * *

■ 37. Section 156.1110 is added to Subpart L to read as follows:

§ 156.1110 Establishment of patient safety standards for QHP issuers.

(a) *Patient safety standards.* A QHP issuer that contracts with a hospital with greater than 50 beds must verify that the hospital, as defined in section 1861(e) of the Social Security Act, is Medicare-certified or has been issued a Medicaid-only CMS Certification Number (CCN) and is subject to the Medicare Hospital Conditions of Participation requirements for—

(1) A quality assessment and performance improvement program as specified in 42 CFR 482.21; and

(2) Discharge planning as specified in 42 CFR 482.43.

(b) *Documentation.* A QHP issuer must collect the CCN, from each of its contracted hospitals with greater than 50 beds, to demonstrate that those hospitals meet patient safety standards required in paragraph (a) of this section.

(c) *Reporting.* (1) A QHP issuer must make available to the Exchange the documentation referenced in paragraph (b) of this section, upon request by the Exchange, in a time and manner specified by the Exchange.

(2) Issuers of multi-State plans, as defined in § 155.1000(a) of this subchapter, must provide the documentation described in paragraph (b) of this section to the U.S. Office of Personnel Management, in the time and manner specified by the U.S. Office of Personnel Management.

(d) *Effective date.* A QHP issuer must ensure that each QHP meets patient safety standards in accordance with paragraph (a) of this section effective for plan years beginning on or after January 1, 2015.

■ 38. Section 156.1210 is amended by adding paragraph (c) to read as follows:

§ 156.1210 Confirmation of HHS payment and collections reports.

* * * * *

(c) *Discrepancies to be addressed in future reports.* Discrepancies in payment and collections reports identified to HHS under this section will be addressed in subsequent payment and collections reports, and will not be used to change debts determined pursuant to invoices generated under previous payment and collections reports.

■ 39. Section 156.1215 is added to Subpart M to read as follows:

§ 156.1215 Payment and collections processes.

(a) *Netting of payments and charges for 2014.* In 2014, as part of its monthly payment and collections process, HHS will net payments owed to QHP issuers and their affiliates under the same taxpayer identification number against amounts due to the Federal government from the QHP issuers and their affiliates under the same taxpayer identification number for advance payments of the premium tax credit, advance payments of cost-sharing reductions, and payment of Federally-facilitated Exchange user fees.

(b) *Netting of payments and charges for later years.* In 2015 and later years, as part of its payment and collections process, HHS may net payments owed to issuers and their affiliates operating under the same tax identification number against amounts due to the Federal government from the issuers and their affiliates under the same taxpayer identification number for advance payments of the premium tax credit, advance payments of and reconciliation of cost-sharing reductions, payment of Federally-facilitated Exchange user fees, and risk adjustment, reinsurance, and risk corridors payments and charges.

(c) *Determination of debt.* Any amount owed to the Federal government by an issuer and its affiliates for advance payments of the premium tax credit, advance payments of and reconciliation of cost-sharing reductions, Federally-facilitated Exchange user fees, risk adjustment, reinsurance, and risk corridors, after HHS nets amounts owed by the Federal government under these programs, is a determination of a debt.

■ 40. Section 156.1220 is added to subpart M to read as follows:

§ 156.1220 Administrative appeals.

(a) *Requests for reconsideration.* (1) *Matters for reconsideration.* An issuer may file a request for reconsideration under this section to contest a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error only with respect to the following:

(i) The amount of advance payment of the premium tax credit, advance payment of cost-sharing reductions or Federally-facilitated Exchange user fees charge for a benefit year;

(ii) The amount of a risk adjustment payment or charge for a benefit year, including an assessment of risk adjustment user fees;

(iii) The amount of a reinsurance payment for a benefit year;

(iv) The amount of a risk adjustment default charge for a benefit year;

(v) The amount of a reconciliation payment or charge for cost-sharing reductions for a benefit year; or

(vi) The amount of a risk corridors payment or charge for a benefit year.

(2) *Materiality threshold.* Notwithstanding paragraph (a)(1) of this section, an issuer may file a request for reconsideration under this section only if the amount in dispute under paragraph (a)(1)(i) through (vi) of this section, as applicable, is equal to or exceeds 1 percent of the applicable payment or charge listed in that subparagraph payable to or due from the issuer for the benefit year, or $10,000, whichever is less.

(3) *Time for filing a request for reconsideration.* The request for reconsideration must be filed in accordance with the following timeframes:

(i) For advance payments of the premium tax credit, advance payments of cost-sharing reductions, or Federally-facilitated Exchange user fee charges, within 60 calendar days after the date of the final reconsideration notification specifying the aggregate amount of advance payments of the premium tax credit, advance payments of cost-sharing reductions, and Federally-facilitated Exchange user fees for the applicable benefit year;

(ii) For a risk adjustment payment or charge, including an assessment of risk adjustment user fees, within 60 calendar days of the date of the notification provided by HHS under § 153.310(e) of this subchapter;

(iii) For a reinsurance payment, within 60 calendar days of the date of the notification provided by HHS under § 153.240(b)(1)(ii) of this subchapter;

(iv) For a default risk adjustment charge, within 60 calendar days of the date of the notification of the default risk adjustment charge;

(v) For reconciliation of cost-sharing reductions, within 60 calendar days of the date of the notification provided by HHS of the cost-sharing reduction reconciliation payment or charge; and

(vi) For a risk corridors payment or charge, within 60 calendar days of the date of the notification provided by HHS under § 153.510(d) of this subchapter.

(4) *Content of request.* (i) The request for reconsideration must specify the findings or issues specified in paragraph (a)(1) of this section that the issuer challenges, and the reasons for the challenge.

(ii) Notwithstanding paragraph (a)(1) of this section, a reconsideration with respect to a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error may be requested only if, to the extent the issue could have been previously identified by the issuer to HHS under § 153.710(d)(2) or (e)(2) of this subchapter, it was so identified and remains unresolved.

(iii) Notwithstanding paragraph (a)(1) of this section, a reconsideration with respect to advance payments of the premium tax credit, advance payments of cost-sharing reductions, and Federally-facilitated Exchange user fees may be requested only if, to extent the issue could have been previously identified by the issuer to HHS under § 156.1210, it was so identified and remains unresolved. An issuer may request reconsideration if it previously identified an issue under § 156.1210 after the 15-calendar-day deadline, but late discovery of the issue was not due to misconduct on the part of the issuer.

(iv) The issuer may include in the request for reconsideration additional documentary evidence that HHS should consider. Such documents may not include data that was to have been filed by the applicable data submission deadline, but may include evidence of timely submission.

(5) *Scope of review for reconsideration.* In conducting the reconsideration, HHS will review the appropriate payment and charge determinations, the evidence and findings upon which the determination was based, and any additional documentary evidence submitted by the issuer. HHS may also review any other evidence it believes to be relevant in deciding the reconsideration, which will be provided to the issuer with a reasonable opportunity to review and rebut the evidence. The issuer must prove its case by a preponderance of the evidence with respect to issues of fact.

(6) *Reconsideration decision.* HHS will inform the issuer of the reconsideration decision in writing. A reconsideration decision is final and binding for decisions regarding the advance payments of the premium tax credit, advance payment of cost-sharing reductions, or Federally-facilitated Exchange user fees. A reconsideration decision with respect to other matters is subject to the outcome of a request for informal hearing filed in accordance with paragraph (b) of this section.

(b) *Informal hearing.* An issuer may request an informal hearing before a CMS hearing officer to appeal HHS's reconsideration decision.

(1) *Manner and timing for request.* A request for an informal hearing must be made in writing and filed with HHS within 30 calendar days of the date of the reconsideration decision under paragraph (a)(5) of this section.

(2) *Content of request.* The request for informal hearing must include a copy of the reconsideration decision and must specify the findings or issues in the decision that the issuer challenges, and its reasons for the challenge. HHS may submit for review by the CMS hearing officer a statement of its reasons for the reconsideration decision.

(3) *Informal hearing procedures.* (i) The issuer will receive a written notice of the time and place of the informal hearing at least 15 calendar days before the scheduled date.

(ii) The CMS hearing officer will neither receive testimony nor accept any new evidence that was not presented with the reconsideration request and HHS statement under paragraph (b) of this section. The CMS hearing officer will review only the documentary evidence provided by the issuer and HHS, and the record that was before HHS when HHS made its reconsideration determination. The issuer may be represented by counsel in the informal hearing, and must prove its case by clear and convincing evidence with respect to issues of fact.

(4) *Decision of the CMS hearing officer.* The CMS hearing officer will send the informal hearing decision and the reasons for the decision to the issuer. The decision of the CMS hearing officer is final and binding, but is subject to the results of any Administrator's review initiated in accordance with paragraph (c) of this section.

(c) *Review by the Administrator.* (1) If the CMS hearing officer upholds the reconsideration decision, the issuer may request review by the Administrator of CMS within 15 calendar days of the date of the CMS hearing officer's decision. The request for review must specify the findings or issues that the issuer challenges. HHS may submit for review by the Administrator a statement supporting the decision of the CMS hearing officer.

(2) The Administrator will review the CMS hearing officer's decision, the statements of the issuer and HHS, and any other information included in the record of the CMS hearing officer's decision, and will determine whether to uphold, reverse, or modify the CMS hearing officer's decision. The issuer must provide its case by clear and convincing evidence with respect to issues of fact. The Administrator will send the decision and the reasons for the decisions to the issuer.

(3) The Administrator's determination is final and binding.

PART 158—ISSUER USE OF PREMIUM REVENUE: REPORTING AND REBATE REQUIREMENTS

■ 41. The authority citation for part 158 continues to read as follows:

Authority: Section 2718 of the Public Health Service Act (42 U.S.C. 300gg–18), as amended.

■ 42. Section 158.130 is amended by revising paragraph (b)(5) to read as follows:

§ 158.130 Premium revenue.

* * * * *

(b) * * *

(5) Account for the net payments or receipts related to the risk adjustment, risk corridors (using an adjustment percentage, as described in § 153.500 of this subchapter, equal to zero percent), and reinsurance programs under sections 1341, 1342, and 1343 of the Patient Protection and Affordable Care Act, 42 U.S.C. 18061, 18062, 18063.

* * * * *

■ 43. Section 158.140 is amended by revising paragraph (b)(4)(ii) to read as follows:

§ 158.140 Reimbursement for clinical services provided to enrollees.

* * * * *

(b) * * *

(4) * * *

(ii) Receipts related to the transitional reinsurance program and net payments or receipts related to the risk adjustment and risk corridors programs (calculated using an adjustment percentage, as described in § 153.500 of this subchapter, equal to zero percent) under sections 1341, 1342, and 1343 of the Patient Protection and Affordable Care Act, 42 U.S.C. 18061, 18062, 18063.

* * * * *

■ 44. Section 158.240 is amended by revising paragraph (c)(2) to read as follows:

§ 158.240 Rebating premium if the applicable medical loss ratio standard is not met.

* * * * *

(c) * * *

(2) For example, an issuer must rebate a pro rata portion of premium revenue if it does not meet an 80 percent MLR for the individual market in a State that has not set a higher MLR. If an issuer has a 75 percent MLR for the coverage it offers in the individual market in a State that has not set a higher MLR, the issuer must rebate 5 percent of the premium paid by or on behalf of the enrollee for the MLR reporting year after subtracting a pro rata portion of taxes and fees and accounting for payments or receipts related to the reinsurance, risk adjustment and risk corridors programs (calculated using an adjustment percentage, as described in § 153.500 of this subchapter, equal to zero percent). If the issuer's total earned premium for the MLR reporting year in the individual market in the State is $200,000, the issuer received transitional reinsurance payments of $2,500, and made net payments related to risk adjustment and risk corridors of $20,000 (calculated using an adjustment percentage, as described in § 153.500 of this subchapter, equal to zero percent), the issuer's gross earned premium in the individual market in the State would be $200,000 plus $2,500 minus $20,000, for a total of $182,500. If the issuer's Federal and State taxes and licensing and regulatory fees, including reinsurance contributions, that may be excluded from premium revenue as described in §§ 158.161(a), 158.162(a)(1) and 158.162(b)(1), allocated to the individual market in the State are $15,000, and the net payments related to risk adjustment and risk corridors, reduced by reinsurance receipts, that must be accounted for in premium revenue as described in §§ 158.130(b)(5), 158.221, and 158.240, are $17,500 ($20,000 reduced by $2,500), then the issuer would subtract $15,000 and add $17,500 to gross premium revenue of $182,500, for a base of $185,000 in premium. The issuer would owe rebates of 5 percent of $185,000, or $9,250 in the individual market in the State. In this example, if an enrollee of the issuer in the individual market in the State paid $2,000 in premiums for the MLR reporting year, or 1/100 of the issuer's total premium in that State market, then the enrollee would be entitled to 1/100 of the total rebates owed by the issuer, or $92.50.

* * * * *

Dated: February 26, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 27, 2014.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2014–05052 Filed 3–5–14; 4:15 pm]

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Part III

Department of Transportation

Federal Highway Administration

23 CFR Part 490
National Performance Management Measures; Highway Safety Improvement Program; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 490

[Docket No. FHWA–2013–0020]

RIN 2125–AF49

National Performance Management Measures; Highway Safety Improvement Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Section 1203 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) declared that performance management will transform the Federal-aid highway program and refocus it on national transportation goals, increase accountability and transparency of the Federal-aid highway program, and improve project decision making through performance-based planning and programming. Section 1203 of MAP–21 identifies national transportation goals and requires the Secretary to promulgate a rulemaking to establish performance measures and standards in specified Federal-aid highway program areas. This NPRM proposes to establish measures for State departments of transportation (State DOT) to use to carry out the Highway Safety Improvement Program (HSIP) and to assess serious injuries and fatalities per vehicle mile traveled, and the number of serious injuries and fatalities. The HSIP is a core Federal-aid highway program with the purpose of achieving a significant reduction in fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal lands.

DATES: Comments must be received on or before June 9, 2014. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number FHWA–2013–0020 by any one of the following methods:

Fax: 1–202–493–2251;

Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or Electronically through the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2125–AF49). Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Francine Shaw Whitson, Office of Infrastructure, (202) 366–8028, or Anne Christenson, Office of Chief Counsel, (202) 366–1356, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA will be publishing two additional NPRMs to establish the remaining measures required under 23 U.S.C. 150(c). The second NPRM focuses on the measures to assess the condition of pavements and bridges. The third performance-measure NPRM focuses on measures for the performance of the National Highway System (NHS), the Congestion Mitigation and Air Quality (CMAQ) program, and freight movement on the Interstate. This last NPRM will also include a discussion that summarizes all three of the proposed rules to establish the measures required under 23 U.S.C. 150(c).

This NPRM also proposes the following: the definitions that will be applicable to the new 23 CFR 490; the process to be used by State DOTs and Metropolitan Planning Organizations (MPOs) to establish safety-related performance targets that reflect the measures proposed in this rulemaking; a methodology to be used to assess State DOTs compliance with the target achievement provision specified under 23 U.S.C. 148(i); and the process State DOTs must follow to report on progress towards the achievement of safety-related performance targets. Finally, this NPRM includes a discussion on the collective rulemaking actions FHWA intends to take to implement MAP–21 performance-related provisions.

Table of Contents for Supplementary Information

I. Executive Summary

a. Purpose of the Regulatory Action

The MAP–21 (Pub. L. 112–141) transforms the Federal-aid highway program by establishing new requirements for performance management to ensure the most efficient investment of Federal transportation funds. Performance management refocuses attention on national transportation goals, increases the accountability and transparency of the Federal-aid highway program, and improves project decision making through performance-based planning and programming. The FHWA is required to establish measures through a rulemaking to assess performance in 12 areas [1] generalized as follows: (1) serious injuries per Vehicle Miles Traveled (VMT); (2) fatalities per VMT; (3) number of serious injuries; (4) number of fatalities; (5) pavement condition on the Interstate system; (6) pavement condition on the non-Interstate NHS; (7) bridge condition on the NHS; (8) traffic congestion; (9) on-road mobile source emissions; (10) freight movement on the Interstate system; (11) performance of the Interstate system; and (12) performance of the non-Interstate NHS. This rulemaking is the first of 3 NPRMs that propose the establishment of performance measures for State DOTs and MPOs to use to carry out Federal-aid highway programs and to assess performance in each of these 12 areas. This rulemaking seeks to establish

[1] These areas are listed within 23 U.S.C. 150(c), which requires the Secretary to establish measures to assess performance or condition.

measures for the first four areas in the above list.

This NPRM proposes to establish performance measures to carry out the HSIP and to assess serious injuries and fatalities, both in number and expressed as a rate, on all public roads. In addition, this NPRM proposes to establish the process for State DOTs and MPOs to use to establish and report safety targets, and the process that FHWA will use to assess progress State DOTs have made in achieving safety targets.

b. Summary of the Major Provisions of the Regulatory Action in Question

The FHWA proposes the establishment of measures to be used by State DOTs to assess performance and carry out the HSIP; the process for State DOTs and MPOs to use to establish safety targets; the methodology to determine whether State DOTs have achieved their safety targets; and the process for State DOTs to report on progress for their safety targets. Section references below refer to sections of proposed regulatory text for title 23 of the Code of Federal Regulations.

Section 490.205 proposes to define serious injuries in a manner that would provide for a uniform definition for national reporting in this performance area. The FHWA proposes to allow States 18 months from the effective date of this rule to adopt the latest edition Model Minimum Uniform Crash Criteria (MMUCC) definition and attribute for "Suspected Serious Injury (A)." The DOT also recommends that, by 2020, States prepare to determine serious injuries using a hospital records injury outcome reporting system that links injury outcomes from medical records to crash reports.

Section 490.207 proposes four measures to be used by State DOTs to assess serious injuries and fatalities per VMT, and the number of serious injuries and fatalities. Each of the four measures would be representative of a 5-year rolling average (rather than a single year period), where fatality-related measures would be derived from the Fatality Analysis Reporting System (FARS) and serious injury-related measures would be derived from the State motor vehicle crash database. State DOTs would calculate serious injury and fatality rates per one hundred million VMT as documented in the Highway Performance Monitoring System (HPMS).

Section 490.209 proposes the process to be used by State DOTs and MPOs to establish targets for each of the four safety measures. DOT believes that, to the extent practicable, the performance measures common to the State's Highway Safety Plan (HSP) and the State Highway Safety Improvement Program (HSIP) (fatalities, fatality rate, and serious injuries) should be defined identically, as coordinated through the State Strategic Highway Safety Plan. While common performance measures are proposed in this NPRM, NHTSA is subject to a statutory requirement under MAP–21 that revisions to performance measures be coordinated with the Governors Highway Safety Association. The DOT also proposes that States would establish targets identical to those for common performance measures.

This NPRM proposes that State DOTs will establish the targets for these measures in the annual HSIP report while State Highway Safety Offices (SHSO) will establish the targets for measures in the HSP. For this reason, State DOTs and SHSOs should coordinate the targets so they are able to report identical targets for the common measures. The SHSOs established these targets beginning with HSPs for fiscal year 2014. The MAP–21 requires State DOTs to establish statewide targets not later than 1 year after the effective date of this rule. This rule proposes to require State DOTs to begin reporting this target information in the HSIP annual report due August 31 following the effective date of this rule. State DOTs would have the flexibility to also establish one aggregate target for urbanized areas and one aggregate target for non-urbanized areas for each performance measure. In accordance with MAP–21, MPOs would be required to establish targets for their entire Metropolitan Planning Area in coordination with the State DOT not later than 180 days after the date the respective State DOT establishes their safety targets. It is proposed in this rule that MPOs would establish targets for their Metropolitan Planning Area by either supporting the State DOT target or defining a target unique to its metropolitan area. The MPOs would be required to take this target establishing action each time the State DOT establishes a safety target.

Section 490.211 proposes the method FHWA will use to assess whether State DOTs have achieved or have made significant progress toward the achievement of their safety targets in accordance with 23 U.S.C. 148(i). State DOTs that have overall achieved their safety targets would not need to demonstrate significant progress. The FHWA would determine significant progress from FARS data for the number of fatalities, FARS and HPMS data for the fatality rate, State reported data for the number of serious injuries, and State reported data and HPMS data for the serious injury rate. The FHWA would consider a State DOT to have made significant progress toward achieving each target if the actual outcome for each target is at or below the upper bound of a 70 percent prediction interval, which would be set based on the projection point from a 10-year historical trend line. The FHWA would only consider a State DOT to have made overall significant progress if that State DOT achieved or made significant progress for at least 50 percent of their safety targets. State DOTs that the FHWA determine not to have achieved overall significant progress for their safety targets would need to comply with 23 U.S.C. 148(i). Although this provision is directed at State DOTs, MPOs could also be indirectly impacted by consequences to the State DOT for non-compliance. The method by which the FHWA will review performance progress of MPOs is discussed in the updates to the Statewide and Metropolitan Planning regulations.

Section 490.213 proposes safety performance reporting for State DOTs and MPOs. State DOTs would establish and report their safety targets and progress toward their safety targets in the annual HSIP report in accordance with 23 CFR 924. Targets established by the MPO would be reported to their State DOTs on an annual basis in a manner that is agreed upon by both parties. The MPOs would report on progress toward the achievement of their targets in their System Performance Report as part of their transportation plan, in accordance with 23 CFR 450. In addition, State DOTs should include similar information in their transportation plans.

c. Costs and Benefits

The FHWA estimated the incremental costs associated with eight new requirements [2] proposed in this NPRM that represent a change to current practices for State DOTs and MPOs. The FHWA derived the costs of all eight components by assessing the expected increase in level of effort from labor to standardize and update data collection and reporting systems of State DOTs, as well as the increase in level of effort from labor to establish and report targets.

To estimate costs, the FHWA multiplied the level of effort, expressed in labor hours, with a corresponding

[2] See Table 1 in Section VI. Rulemaking Analysis and Notices.

loaded wage rate [3] that varied by the type of laborer needed to perform the activity. Following this approach the 10-year undiscounted incremental costs to comply with this rule is $66.7 million. Approximately 39 percent of these costs represent one time costs to implement this rule.

The FHWA expects that, upon implementation, the proposed rule would result in some significant benefits, although they are not easily quantifiable. Specifically,

- the FHWA expects safety investment decision making to be more informed through the use of consistent and uniform measures,
- a greater level of accountability for the use of Federal funds to reduce fatalities and serious injuries on all public roadways,
- and the achievement of progress toward the MAP–21 national goal for safety.

The FHWA could not directly quantify the expected benefits discussed above due to data limitations and the amorphous nature of the benefits from the proposed rule. Therefore, in order to evaluate benefits, the FHWA used a break-even analysis as the primary approach to quantify benefits. Following this approach, the FHWA used the break-even analysis to assess the level of reduction in fatalities or incapacitating injuries needed for the benefits to justify the costs of the proposed rule. The results of the break-even analysis showed that the proposed rule would need to prevent approximately 7 fatalities or an equivalent 153 incapacitating injuries nationwide over 10 years to generate enough benefits to outweigh the cost of the proposed rule. This translates to approximately 1 avoided fatality or 15 equivalent incapacitating injuries respectively per year nationwide (compared to 33,561 fatalities and an estimated 2.36 million injuries as reported by NHTSA for 2012 [4]). The FHWA believes that the proposed rule would surpass this threshold and, as a result, the benefits of the rule would outweigh the costs. The following table summarizes the costs and identifies the breakeven benefits of the proposed rule.

SUMMARY OF ESTIMATED COSTS AND BENEFITS

Category	Cost estimate	Units			Source/citation
		Year dollar	Discount rate (percent)	Period covered (years)	
Costs:					
Annualized Monetized ($/year)	$7,670,390	2012	7	10	Proposed Rule RIA.
	7,092,939	2012	3	10	
State, Local, and/or Tribal Government	$7,670,390	2012	7	10	Proposed Rule RIA.
	7,092,939	2012	3	10	
Small Business	No substantial impact				Proposed Rule RIA.
Benefits:					
Qualitative	The rule is cost-beneficial if over the 10-year analysis period if it reduces the number of fatalities by 7.3 or the number of incapacitating injuries by 153.2, which is equivalently .7 fatalities or 15.3 incapacitating injuries per year in a 10-year study period, from its current base case projection. Because of this low threshold, FHWA determines that the proposed rule benefits outweigh the costs.				

II. Discussion of Stakeholder Engagement and Outreach

In developing the NPRMs required by 23 U.S.C. 150(c), including this NPRM, the DOT conducted outreach efforts to obtain technical information as well as information on operational and economic impacts from stakeholders and the public. State DOTs, MPOs, transit agencies, and private/non-profit constituents across the country participated in the outreach efforts. A listing of each contact or series of contacts influencing the agency's position may be found in the docket.

A. Consultation With State Departments of Transportation, Metropolitan Planning Organizations, and Other Stakeholders

In accordance with 23 U.S.C. 150(c)(1), DOT consulted regularly with affected stakeholders (State DOTs, MPOs, industry, advocacy organizations, etc.) to better understand the operational and economic impact of this proposed rule. In general, these consultations included:

- Conducted Listening sessions and workshops to clarify stakeholder sentiment and capture diverse opinions on the interpretation of technical information on the potential economic and operational impacts of implementing 23 U.S.C. 150;
- Conducted Listening sessions and workshops to better understand the state-of-the-practice on the economic and operational impacts of implementing various noteworthy practices, emerging technologies, and data reporting, collection, and analysis frameworks;
- Hosted Webinars with targeted stakeholder audiences through a chat pod or conference call; and
- Attended meetings with non-DOT subject matter experts, including task forces, advocacy groups, private industry, non-DOT Federal employees, academia, etc. to discuss timelines, priorities, and the most effective methods for implementing 23 U.S.C. 150; discuss and collect information on the impact of conceptual frameworks of guidance and the issues that need to be addressed in the NPRMs or the questions that need to be answered to facilitate efficient implementation; and collect factual information about the issues that need to be addressed or the questions that need to be answered in the NRPMs.

B. Broader Public Consultation

It is the DOT's policy to provide for and encourage public participation in the rulemaking process. In addition to the public participation that was coordinated in conjunction with the stakeholder consultation discussed above, the DOT provided opportunities

[3] Bureau of Labor Statistics (BLS) Employee Cost Index, 2012.

[4] Traffic Safety Facts Research Note. 2012 Motor Vehicle Crashes: Overview. DOT HS 811 856.

for broader public participation. Those opportunities included facilitating opportunities for the public to provide technical and economic information to improve the agency's understanding of a subject and the potential impacts of rulemaking. This was done by providing an email address (*performancemeasuresrulemaking@dot.gov*) feature on FHWA's MAP–21 Web site to allow the public to provide comments and suggestions about the development of the performance measures and by holding national online dialogues and listening sessions to ask the public to post their ideas on national performance measures, standards, and policies. The FHWA also conducted educational outreach to inform the public about transportation-related performance measures and standards, and solicited comments on them.

In accordance with 23 U.S.C. 150(c)(2)(A), the FHWA will "provide States, metropolitan planning organizations, and other stakeholders not less than 90 days to comment on any regulation proposed by the Secretary. . . ." During the notice and comment period, the FHWA plans to hold public meetings to explain the provisions contained in these NPRMs, including this NPRM. All such meetings will be open to the public and announced in the **Federal Register**. However, all comments regarding the NPRM must be submitted in writing to the rulemaking docket.

C. Summary of Viewpoints Received

A summary of the common themes expressed and trends that emerged based on all stakeholder engagements and feedback, related to this rulemaking, are as follows:

The FHWA should account for the safety of all road users by including separate measures for motorized and non-motorized (e.g., pedestrian, bicycle) transportation. Having separate measures will allow State DOTs to utilize some HSIP funds on non-motorized transportation without any detriment to safety efforts for other road users.

The FHWA should define performance measures that specifically evaluate the number of fatalities and serious injuries for pedestrian and bicycles crashes. The FHWA should require that bicycle and pedestrian crashes and fatalities be reported nationally and by State and MPO.

The FHWA should be careful in making changes in the definitions of urbanized and rural areas to avoid adversely impacting the reporting of fatality and serious injury rates.

The FHWA should define the safety measures described in 23 U.S.C. 150(c) to include the use of a 5-year to 7-year moving average and the use of actual numbers (i.e., number of fatalities, number of serious injuries) versus rates (i.e., number of fatalities per 100 million VMT, number of serious injures per 100 million VMT).

There is a need for a consistent definition for serious injury. Establishment of uniform data sets, sources, and standards is also necessary to ensure there is consistency in the determination of metrics, the reporting of results, and the analysis of data. The FHWA should move toward using the actual number of fatalities and serious injuries instead of the number of collisions that involve fatalities and serious injuries.

The FHWA should determine how State DOTs demonstrate they have made significant progress toward achieving performance targets and whether the assessment for having made significant progress should be base-lined and determined according to a State-by-State/MPO-by-MPO method. Significant or substantial progress could be linked to the reversing of negative trends or moving of trends in a positive direction.

The administrative burden of target establishment and reporting should not become an onerous, unfunded mandate. The FHWA should ensure that timelines are set in a reasonable fashion that can be achieved by the State DOTs.

Lastly, while performance targets need to be consistent with performance goals, they need to be flexible with possible use of a target range or multiple targets for the same measure. The FHWA should be careful not to infringe upon what is already working at the State DOT and MPO level.

III. Rulemaking Authority and Background

The cornerstone of MAP–21's Federal-aid highway program transformation is the transition to a performance and outcome-based program. As part of this program, recipients of Federal-aid highway funds make transportation investments to achieve individual targets that collectively make progress toward national goals.

The MAP–21 provisions that focus on the achievement of performance outcomes are contained in a number of sections of the law that are administered by different DOT agencies. Consequently, these provisions may require an implementation approach that includes a number of separate but related rulemakings, some from other modes within the DOT. This NPRM is focused on FHWA's implementation of performance provisions related to the HSIP. A rulemaking to update the HSIP regulations at 23 CFR 924 is also underway (RIN 2125–AF56). Interested persons should refer to both rulemakings. Additional rulemakings are underway to implement other MAP–21 requirements. A summary of these rulemakings, as they relate to this proposed rule, is provided in this section, and additional information regarding related implementation actions is available on the FHWA Web site.[5]

Summary of Related Rulemakings

The DOT's proposal regarding MAP–21's performance requirements will be presented through several rulemakings, some of which were referenced in the above discussions. As a summary, these rulemaking actions are listed below and should be referenced for a complete picture of performance management implementation. The summary below describes the main provisions that DOT plans to propose for each rulemaking. The DOT plans to seek comment on each of these rulemakings.

1. First Federal-aid Highway Performance Measures Rulemaking (this NPRM)
   a. Propose and define national measures for the HSIP
   b. Coordinated State and MPO target establishment requirements for the Federal-aid highway program
   c. Determination of significant progress toward the achievement of targets
   d. Performance progress reporting requirements and timing
   e. Discuss how FHWA intends to implement MAP–21 performance-related provisions
2. Second Federal-aid Highway Performance Measures Rulemaking (RIN: 2125–AF53)
   a. Propose and define national measures for the condition of NHS pavements and bridges
   b. Coordinated State and MPO target establishment requirements for the Federal-aid highway program
   c. Determination of significant progress toward the achievement of targets for National Highway Performance Program (NHPP)
   d. Performance progress reporting requirements and timing
   e. Minimum standards for Interstate pavement conditions
3. Third Federal-aid Highway Performance Measures Rulemaking (RIN: 2125–AF54)
   a. Propose and define national

[5] *http://www.fhwa.dot.gov/map21/qandas/qapm.cfm.*

measures for the remaining areas under 23 U.S.C. 150(c).
b. Coordinated State and MPO target establishment requirements for the Federal-aid highway program
c. Performance progress reporting requirements and timing
d. Provide a summary of all three performance measure proposed rules
4. Update to the Metropolitan and Statewide Planning Regulations (RIN: 2125–AF52)
a. Supporting national goals in the scope of the planning process
b. Coordination between States, MPOs, and public transportation providers in selecting performance targets
c. Integration of elements of other performance-based plans into the metropolitan and statewide planning process.
d. Discussion in Metropolitan and Statewide Transportation Improvement Programs documenting how the programs are designed to achieve targets
e. New performance reporting in the Metropolitan and the Statewide transportation plans
5. Updates to the Highway Safety Improvement Program Regulations (RIN: 2125–AF56)
a. Integration of performance measures and targets into the HSIP
b. Strategic Highway Safety Plan updates
c. Establishment of Model Inventory of Roadway Element—Fundamental Data Elements
d. HSIP reporting requirements
6. Federal-aid Highway Asset Management Plan Process Rule (RIN: 2125–AF57)
a. Contents of asset management plan
b. Certification of process to develop plan
c. Transition period to develop plan
d. Minimum standards for pavement and bridge management systems
7. Transit State of Good Repair Rule (RIN: 2132–AB07)
a. Define state of good repair and establish measures
b. Transit asset management plan content and reporting requirements
c. Target establishment requirements for public transportation agencies and MPOs
8. Transit Safety Plan Rule (RIN: 2132–AB20)
a. Define transit safety standards
b. Transit safety plan content and reporting requirements
9. Highway Safety Grant Programs Rule (NHTSA Interim Final Rule (IFR) [6] (RIN: 2127–AL30, 2127–AL29)
a. Highway safety plan contents, including establishment of performance measures, targets, and reporting requirements
b. Review and approval of highway safety plans

Organization of MAP–21 Performance-Related Provisions

The FHWA organized the many performance-related provisions within MAP–21 into six elements as defined below:

- National Goals—Goals or program purpose established in MAP–21 to focus the Federal-aid highway program on specific areas of performance.
- Measures—Establishment of measures by FHWA to assess performance and condition in order to carry out performance-based Federal-aid highway programs.
- Targets—Establishment of targets by recipients of Federal-aid highway funding for each of the measures to document expectations of future performance.
- Plans—Development of strategic and/or tactical plans by recipients of Federal funding to identify strategies and investments that will address performance needs.
- Reports—Development of reports by recipients of Federal funding that would document progress toward the achievement of targets, including the effectiveness of Federal-aid highway investments.
- Accountability—Requirements developed by FHWA for recipients of Federal funding to use to achieve or make significant progress toward achieving targets established for performance.

The following provides a summary of MAP–21 provisions, as they relate to the six elements listed above, including a reference to other related rulemakings that should be considered for a more comprehensive view of MAP–21 performance management implementation.

a. National Goals

The MAP–21 section 1203 establishes national goals to focus the Federal-aid highway program. The following national goals are codified at 23 U.S.C. 150(b):

- Safety—To achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal lands.
- Infrastructure condition—To maintain the highway infrastructure asset system in a state of good repair.
- Congestion reduction—To achieve a significant reduction in congestion on the NHS.
- System reliability—To improve the efficiency of the surface transportation system.
- Freight movement and economic vitality—To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development.
- Environmental sustainability—To enhance the performance of the transportation system while protecting and enhancing the natural environment.
- Reduced project delivery delays—To reduce project costs, promote jobs and the economy, and expedite the movement of people and goods by accelerating project completion through eliminating delays in the project development and delivery process, including reducing regulatory burdens and improving agencies' work practices.

These national goals will largely be supported through the metropolitan and statewide planning process, which is discussed under a separate rulemaking (2125–AF52) to update the Metropolitan and Statewide Planning Regulations at 23 CFR 450.

b. Measures

The MAP–21 requires the establishment of performance measures [7], in consultation with State DOTs, MPOs, and other stakeholders, that would do the following: carry out the NHPP and assess pavement conditions for the Interstate and NHS (excluding Interstate), NHS bridge condition, and performance of the Interstate and NHS (excluding Interstate); carry out the HSIP and assess serious injuries and fatalities per VMT and the number of serious injuries and fatalities; carry out the CMAQ program and assess traffic congestion and on-road mobile source emissions; and assess freight movement on the Interstate system.

The FHWA will issue three NPRMs in sequence to propose the measures for the areas listed above. This NPRM focuses on the performance measures, for the purpose of carrying out the HSIP, to assess the number of serious injuries and fatalities and serious injuries and fatalities per VMT. A second NPRM will be issued by FHWA that will propose the measures to assess the condition of pavements and bridges, and a third NPRM will be issued that will propose the remaining areas under 23 U.S.C. 150(c) that require the establishment of measures. We anticipate issuing these

[6] 23 U.S.C. 402(k); Uniform Procedures for State Highway Safety Grant Programs, Interim final rule, 78 FR 4986 (January 23, 2013) (to be codified at 23 CFR Part 1200).

[7] 23 U.S.C. 150(c)(1).

three rulemakings in staggered sequence. The FHWA proposes to establish one common effective date for all three final rules for these performance measures, but we seek comment from the public on what an appropriate effective date would be. Additional information on the approach to establish performance measures for the Federal-aid highway program can be found on the FHWA's Transportation Performance Management Web site.[8]

The MAP–21 also requires the FHWA to establish minimum standards for State DOTs to use in developing and operating bridge and pavement management systems,[9] which the FHWA will propose in a separate rulemaking to establish a Risk Based Asset Management Plan for the NHS. In addition, MAP–21 requires the FHWA to establish minimum levels for the condition of pavements for the Interstate [10] necessary to carry out the NHPP. The FHWA will propose these levels in the second rulemaking to establish measures that focus on pavement and bridge condition for the NHS.

Separate sections of MAP–21 require the establishment of additional measures to assess public transportation performance.[11] These measures, which will be used to monitor the state of good repair of transit facilities and to establish transit safety criteria, will be addressed in two separate rulemakings, led by the Federal Transit Administration (FTA).

c. Targets

The MAP–21 requires State DOTs to establish performance targets reflecting measures established for the Federal-aid highway program [12] and requires MPOs to establish performance targets for these measures where applicable.[13] This NPRM proposes the process for State DOTs and MPOs to follow in the establishment of safety performance targets. The second and third Federal-aid highway performance measure NPRMs will discuss similar target establishment requirements for State DOTs and MPOs as they relate to the measures discussed in the respective proposed rules. Additionally, State DOTs and MPOs are required to coordinate when selecting targets for the areas specified under 23 U.S.C. 150(c) in order to ensure consistency in the establishment of targets, to the maximum extent practical.[14] A separate rulemaking to update the Metropolitan and Statewide Planning Regulations at 23 CFR 450 discusses this coordination requirement. The FHWA will discuss those target establishment requirements in the subsequent rulemakings to implement these respective provisions.

Further, MAP–21 requires SHSOs to establish targets for 10 core highway safety program measures in the State Highway Safety Plan, which NHTSA has implemented through an Interim Final Rule (NHTSA IFR),[15] and for recipients of public transportation Federal funding and MPOs to establish state of good repair and safety targets.[16] Discussions on these target establishment requirements are not included in this NPRM.

d. Plans

A number of provisions within MAP–21 require States and MPOs to develop plans that provide strategic direction for addressing performance needs. For the Federal-aid highway program these provisions require: State DOTs to develop an NHS Asset Management Plan; [17] State DOTs to update their Strategic Highway Safety Plan; [18] MPOs serving a large transportation management area in areas of non-attainment or maintenance to develop a CMAQ Performance Plan; [19] MPOs to include a System Performance Report in the Metropolitan Transportation Plan; [20] and State DOTs and MPOs to include a discussion, to the maximum extent practical, in their Transportation Improvement Program as to how the program will achieve the performance targets they have established for the area.[21] In addition, State DOTs are encouraged to develop a State Freight Plan [22] to document planned activities and investments with respect to freight. This rulemaking does not discuss any requirements to develop or use plans. Rather, a discussion on the development and use of these plans will be included in the respective rulemakings to implement these provisions. More information on the required plans and the actions to implement the statutory provisions related to plans can be found on FHWA's MAP–21 Web site.[23]

e. Reports

The MAP–21 section 1203 requires State DOTs to submit biennial reports to the FHWA on the condition and performance of the NHS, the effectiveness of the investment strategy documented in the State DOT's asset management plan for the NHS, progress in achieving targets, and ways in which the State DOT is addressing congestion at freight bottlenecks.[24] The FHWA is proposing in this NPRM that State DOTs report safety progress through the HSIP annual report, rather than the biennial report required under 23 U.S.C. 150(e). Accordingly, this NPRM does not discuss this biennial report. Rather, the FHWA will discuss the biennial report in the second and third performance measures NPRMs, which will propose the establishment of non-safety measures for the Federal-aid highway program.

Additional progress reporting is required under the CMAQ program, metropolitan transportation planning, elements of the Public Transportation Act of 2012, and the Motor Vehicle and Highway Safety Improvement Act of 2012. Also, State DOTs should include a system performance report in their Statewide transportation plan. These reporting provisions are discussed in separate rulemakings and guidance and are not discussed in this rulemaking.

f. Accountability

Two provisions within MAP–21, specifically 23 U.S.C. 119(e)(7) under the NHPP and 23 U.S.C. 148(i) under the HSIP, require the State DOT to undertake actions if significant progress is not made toward the achievement of State DOT targets established for these respective programs. For the NHPP, if a State DOT does not achieve or make significant progress toward the achievement of its NHS performance targets for two consecutive reporting periods, then the State DOT must document in its next report the actions it will take to achieve the targets.[25] The FHWA will discuss this provision in the second NPRM, which will propose pavement and bridge performance measures for the NHS. For the HSIP, if the State DOT does not achieve or has not made significant progress toward the achievement of its HSIP safety targets, then the State DOT must dedicate a specified amount of its

[8] *http://www.fhwa.dot.gov/tpm/about/schedule.cfm.*

[9] 23 U.S.C. 150(c)(3)(A)(i).

[10] 23 U.S.C. 150(c)(3)(A)(iii).

[11] 49 U.S.C. 5326 and 49 U.S.C. 5329.

[12] 23 U.S.C. 150(d).

[13] 23 U.S.C. 134(h)(2)(B).

[14] 23 U.S.C. 134(h)(2), 23 U.S.C. 135(d)(2), 49 U.S.C. 5303(h)(2), and 49 U.S.C. 5304(d)(2).

[15] 23 U.S.C. 402(k); Uniform Procedures for State Highway Safety Grant Programs, Interim final rule, 78 FR 4986 (January 23, 2013) (to be codified at 23 CFR Part 1200.

[16] 49 U.S.C. 5326(c).

[17] 23 U.S.C. 119(e)(2).

[18] 23 U.S.C. 148(d).

[19] 23 U.S.C. 149(l).

[20] 23 U.S.C. 134(i)(2)(C).

[21] 23 U.S.C. 134(j)(2)(D) and 23 U.S.C. 135(g)(4).

[22] MAP–21 Section 1118.

[23] *http://www.fhwa.dot.gov/map21/qandas/qapm.cfm.*

[24] 23 U.S.C. 150(e).

[25] 23 U.S.C. 119(e)(7).

obligation limitation to safety projects and prepare an annual implementation plan.[26] The regulatory definition and discussion below of "made significant progress" applies only for the purpose of carrying out the HSIP.

In addition, MAP–21 requires that each State DOT maintain minimum standards for Interstate pavement and NHS bridge conditions. If a State DOT falls below either standard, then the State DOT must spend a specified portion of its funds for that purpose until the minimum standard is exceeded.[27] The FHWA will discuss this provision in the second NPRM, which will propose pavement and bridge performance measures for the NHS.

Further, MAP–21 includes special safety rules[28] to require each State DOT to maintain or improve safety performance on high risk rural roads and for older drivers and pedestrians. If the State DOT does not meet these special rules, which contain minimum performance standards, then it must dedicate a portion of HSIP funding (in the case of the high risk rural road special rule) or document in their Strategic Highway Safety Plan (SHSP) actions it intends to take to improve performance (in the case of the older driver and pedestrian special rule). Guidance on how FHWA will administer these two special rules is provided on the FHWA MAP–21 Web site.[29]

Implementation of MAP–21 Performance Requirements

The FHWA will implement the performance requirements within section 1203 of MAP–21 in a manner that results in a transformation of the Federal-aid highway program so that the program focuses on national goals, provides for a greater level of accountability and transparency, and provides a means for the most efficient investment of Federal transportation funds. The FHWA plans to implement these new requirements in a manner that will provide Federal-aid highway fund recipients the greatest opportunity to fully embrace a performance-based approach to transportation investment decision making that does not hinder performance improvement. In this regard, FHWA carefully considered the following principles in the development of proposed regulations for national performance management measures under 23 U.S.C. 150(c):

- Provide for a National Focus—focus the performance requirements on outcomes that can be reported at a national level.
- Minimize the Number of Measures—identify only the most necessary measures that will be required for target establishment and progress reporting. Limit the number of measures to no more than two per area specified under 23 U.S.C. 150(c).
- Ensure for Consistency—provide a sufficient level of consistency, nationally, in the establishment of measures, the process to set targets and report expectations, and the approach to assess progress so that transportation performance can be presented in a credible manner at a national level.
- Phase in Requirements—allow for sufficient time to comply with new requirements and consider approaches to phase in new approaches to measuring, target establishment, and reporting performance.
- Increase Accountability and Transparency—consider an approach that will provide the public and decision makers a better understanding of Federal transportation investment needs and return on investments.
- Consider Risk—recognize that risks in the target establishment process are inherent, and that performance can be impacted by many factors outside the control of the entity required to establish the targets.
- Understand that Priorities Differ—recognize that State DOTs and MPOs must establish targets across a wide range of performance areas, and that they will need to make performance trade-offs to establish priorities, which can be influenced by local and regional needs.
- Recognize Fiscal Constraints—provide for an approach that encourages the optimal investment of Federal funds to maximize performance but recognize that, when operating with scarce resources, performance cannot always be improved.
- Provide for Flexibility—recognize that the MAP–21 requirements are the first steps that will transform the Federal-aid highway program to a performance-based program and that State DOTs, MPOs, and other stakeholders will be learning a great deal as implementation occurs.

The FHWA considered these principles in this NPRM and encourages comments on the extent to which the approach to performance measures set forth in this NPRM supports the principles discussed above.

IV. Performance Measure Analysis

The FHWA, in consultation with State DOTs, MPOs, and other stakeholders, selected for this proposed rule measures to carry out the HSIP and for State DOTs and MPOs to use to assess safety performance. The FHWA assessed the selected measures, using a common methodology, to identify gaps that could impact successful implementation and to better inform the FHWA on the issues that the FHWA will address in this proposed rule. This section discusses why the FHWA selected the proposed measures and the results of FHWA's assessment to identify implementation gaps.

A. Selection of Measures for the Highway Safety Improvement Program

The FHWA considered input from the following sources in selecting proposed measures to carry out the HSIP and for State DOTs and MPOs to use to assess safety performance:

- Knowledge of technical experts within the DOT on the current state of practice to monitor highway safety performance;
- Information provided by external stakeholders received directly or captured as part of organized stakeholder listening sessions;
- Information provided by external stakeholders received indirectly through informal contact such as telephone calls, email, or letters; and
- Measures that have been recommended and documented in nationally recognized reports such as the assessment of measurement readiness documented in the 2011 final report for National Cooperation Highway Research Program (NCHRP) 20–24(37)G, "Technical Guidance for Deploying National Level Performance Measurements," and the 2008 NHTSA publication, "Traffic Safety Performance Measures for States and Federal Agencies," which contains an initial minimum set of 14 performance measures agreed upon by NHTSA and the Governors Highway Safety Association (GHSA).

A listing of each contact or series of contacts influencing the agency's proposals may be found in the docket.

The DOT believes that a unified State approach to highway safety promotes comprehensive transportation and safety planning and program efficiency in the States. For this reason, the DOT proposes that performance measures common to the State's HSP and the HSIP (fatalities, fatality rate, and serious injuries) would be defined identically, as coordinated through the SHSP and subject to the GHSA coordination

[26] 23 U.S.C. 148(i).

[27] 23 U.S.C. 119(f).

[28] 23 U.S.C. 148(g).

[29] *http://www.fhwa.dot.gov/map21/guidance/guidehrrr.cfm.* and *http://www.fhwa.dot.gov/map21/guidance/guideolder.cfm.*

process NHTSA must follow under MAP–21.

The FHWA considered the need to align measures used to carry out highway safety grant programs administered by NHTSA with measures that are proposed to be established through this regulatory action. The MAP–21 restructured and made various substantive changes to the HSIP that is administered by the FHWA under 23 U.S.C. 148. These changes provide for additional consistency between the HSIP and the highway safety grant programs administered by NHTSA, including key outcome performance measures that are consistent between these two programs and for which State DOTs and SHSOs will establish targets. Specifically, MAP–21 modified the existing HSIP at 23 U.S.C. 148 by requiring State DOTs to develop and implement the HSIP by establishing targets that reflect the defined safety performance measures being promulgated in this NRPM.

As stated in NHTSA's IFR, SHSOs have been moving in the direction of using performance measures, such as the number of fatalities and serious injuries and fatality rate, in the State HSP for a number of years. Since 2010, all SHSOs have voluntarily established targets for these performance measures, as described in the report, Traffic Safety Performance Measures for States and Federal Agencies (DOT HS 811 025), developed as a cooperative effort between NHTSA and the GHSA. The MAP–21 requires SHSOs to use the Traffic Safety Performance Measures report for establishing performance measures and targets in the HSP beginning in fiscal year 2014.[30] The MAP–21 further requires NHTSA to coordinate with GHSA in making revisions to the performance measures identified in the report.

This NRPM includes performance measures that are common to both FHWA and NHTSA. The FHWA has been working with NHTSA and other DOT agencies to align those performance measures that are common across those agencies (i.e. fatality rate, fatality number, serious injury number) to ensure that the highway safety community is provided uniform measures of progress. The safety performance measures in this NPRM that are common to all agencies would be defined identically, as coordinated through the SHSP.

The FHWA is proposing HSIP measures for State DOTs to use in assessing safety performance in the four areas mandated in 23 U.S.C. 150(c)(4): (1) number of fatalities; (2) rate of fatalities; (3) number of serious injuries; and (4) rate of serious injuries. The FHWA is proposing the establishment of one consistent measure for each of the four areas mandated under 23 U.S.C. 150(c)(4) to focus on aggregate outcome performance for the reasons noted below:

The FHWA proposes that safety for all users of public roads will be improved by focusing the safety measures on all fatalities and serious injuries. Focusing the measures on all fatalities and all serious injuries, regardless of vehicle type, influencing behavior, or roadway characteristics, provides for a view of overall safety performance that includes all users on all public roads and limits the extent of data collection and analysis.

The aggregation of all fatalities and serious injuries into single measures to carry out the HSIP will provide for more stable trends, allowing for more reliable predictions of future performance on which to base the selection of targets. At the State or MPO level, separating specific types of fatalities and serious injuries for a range of disaggregated measures by vehicle type (including passenger vehicles, trucks, motorcycles, and bicycles); by influencing behavior (e.g., distracted driving, impaired driving, speeding); or by roadway characteristics (e.g., intersections, roadway departure) leads to numbers too statistically small to provide sufficient validity for developing targets to carry out the HSIP.

The performance requirements within MAP–21 are the first foundational steps that will focus the Federal-aid highway program on performance outcomes. It is expected, in this foundational stage, that State DOTs and MPOs will be learning how to manage performance by balancing investment trade-offs across multiple performance measures; many State DOTs and MPOs will be establishing targets to carry out the HSIP for the first time as a result of this new requirement. Therefore, FHWA desires to establish a minimal number of measures to implement 23 U.S.C. 150(c) considering the requirement for State DOTs[31] and MPOs[32] to establish targets for each of these measures (a minimum of 12 measures will be established).

The more detailed analysis of separating specific types of fatalities and serious injuries for a range of disaggregated measures takes place in the creation of the SHSP. The MAP–21 requires that States take into consideration all vehicle and user needs when establishing goals, objectives, and emphasis areas, and describe a program of strategies to reduce or eliminate safety hazards through the SHSP. Each State DOT identifies emphasis areas based on the analysis of all the available safety data after consultation with and input from the safety stakeholders representing the four E's from safety.[33] This analysis and collaboration helps identify the causes of safety hazards, and helps to develop successful improvement strategies to address those hazards and is used in decision making for FHWA's HSIP and NHTSA's highway safety programs. It is the development of the SHSP through a data-driven, coordinated process that includes the State DOTs, MPOs, and other safety stakeholders that ensures specific vehicle and user needs are addressed.

The HSIP safety performance measures should be viewed in the context of other DOT performance measures. As amended by MAP–21, 23 U.S.C. 402(k)(4) specifies that for the NHTSA HSP, traffic safety performance measures, developed in a cooperative effort between NHTSA and GHSA, are to be used by SHSOs in the development and implementation of behavioral highway safety plans and programs. Although limited in fiscal year (FY) 2014 to an initial set of 10 core outcome measures, 1 core behavior measure, and 3 activity measures, MAP–21 allows the NHTSA in subsequent fiscal years to make revisions to the set of performance measures required in the HSP through a coordinated process with GHSA.[34] The FHWA will continue to work with NHTSA toward a consistent application of traffic safety performance measures through a consensus process, subject to the GHSA coordination process NHTSA must follow under MAP–21.

The DOT received input through stakeholder listening sessions and in letters sent to the DOT suggesting that two measures be established for each of the four safety areas: (1) All "motorized" fatalities and serious injuries; and (2) all "non-motorized" fatalities and serious injuries.

The DOT requests comments on how the Department could address separate non-motorized performance measures. The DOT requests input on the extent to which States and MPOs currently collect and report non-motorized data (fatality, serious injury, miles traveled)

[30] 23 U.S.C. 402(f)(4).

[31] 23 U.S.C. 134(h)(2)(B).

[32] 23 U.S.C. 150(d).

[33] The four E's include: Engineering, Education, Enforcement, and Emergency Medical Services.

[34] Currently targets are required to be established through the HSP for only the 10 core outcome measures.

and the reliability and accuracy of such data, and how States and MPOs consider such data in their safety programs and in selecting investments. The DOT also invites the public to suggest ways to most efficiently track, report, and use performance measures to improve safety.

B. Assessment of Selected Measures for the Highway Safety Improvement Program

The FHWA used a common methodology to assess whether the candidate measure was appropriate for national use and whether the FHWA was ready to implement the measure in an accurate, reliable, and credible manner. This methodology included 12 criteria that the FHWA used to assess both the appropriateness and readiness of each measure. The FHWA conducted an assessment to rate the extent to which the measure, as used in current practice, met each of the 12 criteria. As a result of the assessment, FHWA assigned one of the following three ratings to each criterion.

- Green Rating—Criterion is fully met for the candidate measure.
- Yellow Rating—Criterion is partially met for the candidate measure and work is underway to fully meet the criterion.
- Red Rating—Criterion is not fully met or no work is underway or planned that would allow the criterion to be met.

The FHWA used the results of this assessment to identify gaps that the FHWA could address through this rulemaking to improve the effectiveness of the measure to be used to carry out the HSIP and to assess safety performance. A description of the methodology used for this assessment is provided in the rulemaking docket.

The FHWA evaluated the four safety measures that it is proposing in this NPRM based on existing state-of-practice, using the assessment process described earlier in this section. The following table includes a summary of this assessment:

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G=Green Y= Yellow R=Red

Assessment Factor	Fatalities per VMT	Serious Injuries per VMT	No. of Fatalities	No. of Serious Injuries
A1) Is the measure focused on comprehensive performance outcomes?	G	G	G	G
A2) Has the measure been developed in partnership with key stakeholders?	G	Y	G	Y
A3) Is the measure maintainable to accommodate changes?	G	R	G	R
A4) Can the measure be used to support investment decisions, policy making and target establishment?	G	G	G	G
A5) Can the measures be used to analyze performance trends?	G	G	G	G
A6) Has the feasibility and practicality to collect, store, and report data in support of the measures been considered?	G	Y	G	Y
B1) Timeliness	R	R	R	R
B2) Consistency	G	R	G	R
B3) Completeness	G	G	G	G
B4) Accuracy	G	G	G	G
B5) Accessibility	G	Y	G	Y
B6) Data Integration	G	Y	G	Y

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The proposal outlined in this NPRM attempts to address some of the gaps that exist today for lower rated factors so that, as a result of the implementation of these new requirements, the measures would result in an improved assessment rating and thereby better support national programs. In particular, FHWA considered the following factors:

- Criterion A2—recognize that a common approach to define serious injuries is still being discussed by stakeholders and allow for time to transition to a measure that is based on a more consistent definition.
- Criterion A3—consider an approach that will allow for more consistent definitions of serious injury to be phased in over a period of time.
- Criterion B1—recognize the time lag of data available in national data sources compared to the availability of data in State-maintained sources in establishing requirements associated with proposed safety measures.
- Criterion B2—consider an approach to defining serious injuries that would

improve consistency in application across the country and recognize that consistency improvements can take time to implement.

• Criteria A6, B5, and B6—recognize that a comprehensive national data source does not exist today for serious injuries and that there could be a cost to Federal, State and local governments to create such a data source.

The FHWA is proposing an approach to define the safety measures in a manner that is more consistent with input received from stakeholders and addresses the various methods used today to define serious injuries. The specifics of these proposals are described in the Section-by-Section portion of this proposed rule.

V. Section-by-Section Discussion of the General Information and Proposed Highway Safety Improvement Program Performance Measures

Section 490.101 General Definitions

This subpart provides definitions of the following terms: Highway Performance Monitoring System, measure, metric, non-urbanized areas, and target.

The FHWA proposes to include a definition for "Highway Performance Monitoring System (HPMS)" because it will be one of the data sources used in establishing a measure and establishing a target. The HPMS is an FHWA-maintained, national level highway information system that includes State DOT-submitted data on the extent, condition, performance, use and operating characteristics of the Nation's highways. The HPMS database was jointly developed and implemented by FHWA and State DOTs beginning in 1974 and it is a continuous data collection system serving as the primary source of information for the Federal government about the Nation's highway system. Additionally, the data in the HPMS is used for the analysis of highway system condition, performance, and investment needs that make up the biennial Condition and Performance Reports to Congress. These Reports are used by the Congress in establishing both authorization and appropriation legislation, activities that ultimately determine the scope and size of the Federal-aid highway program, and determine the level of Federal highway taxation. Increasingly, State DOTs, as well as the MPOs, have utilized the HPMS as they have addressed a wide variety of concerns about their highway systems.[35] Numerous State DOTs and the MPOs use HPMS data and its analytical capabilities for supporting their condition/performance assessment, investment requirement analysis, strategic and state planning efforts, etc.

The FHWA proposes to include a definition for "measure" because establishing measures is a critical element of an overall performance management approach and it is important to have a common definition that the FHWA can use throughout the Part. To have a consistent definition for "measure," the FHWA proposes to make a distinction between "measure" and "metric." Hence, the FHWA proposes to define "metric" as a quantifiable indicator of performance or condition and to define "measure" as an expression based on a metric that is used to establish targets and to assess progress toward achieving the established targets. For illustrative purposes, a metric for fatalities is the annual number of fatalities and the corresponding measure to establish targets is the 5-year rolling average of the metric.

In addition, the FHWA proposes to include a definition for "non-urbanized areas" to provide clarity in the implementation of the provision in 23 U.S.C. 150(d)(2) that allows the State DOTs the option of selecting different targets for "urbanized and rural areas." As written, the statute is silent regarding the small urban areas that fall between "rural" and "urbanized" areas. Instead of only giving the State DOTs the option of establishing targets for "rural" and "urbanized" areas, FHWA proposes to define "non-urbanized" areas to include both "rural" areas and the small urban areas that are larger than "rural" areas but do not meet the criteria of an "urbanized area." This would then allow State DOTs to establish different targets throughout the entire State for urbanized and non-urbanized areas. For target-setting purposes, the FHWA believes that these small urban areas are best treated with the "rural" areas, as non-urbanized areas, because both of these areas do not have the same complexities that come with having the population and density of urbanized areas and are generally more rural in characteristic. In addition, neither of these areas are treated as MPOs in the transportation planning process or given the authority under MAP–21 to establish their own targets.

Finally, the FHWA proposes to include a definition for "target" to indicate how measures will be used for target establishment by State DOTs and MPOs to assess performance or condition.

Subpart B: National Performance Measures for the Highway Safety Improvement Program

Section 490.201 Purpose

The FHWA proposes to include a statement describing the general purpose of the proposed subpart: to implement certain sections of Title 23, U.S.C. that require FHWA to establish measures for State DOTs to use to assess the number of serious injuries and fatalities and the rate of serious injuries and fatalities.

Section 490.203 Applicability

The FHWA proposes to specify that the safety performance measures are applicable to all public roads covered under 23 U.S.C. 130 and the HSIP under 23 U.S.C. 148. While 23 U.S.C. 148 specifically addresses the HSIP, projects that improve railway-highway crossings, consistent with 23 U.S.C. 130, are eligible as highway safety improvement projects under 23 U.S.C. 148. In addition, 23 U.S.C. 148 requires State DOTs to report on the occurrence of fatalities and serious injuries on railway-highway crossings. Because of the connection between 23 U.S.C. 130 and 148, it is important that any developed measures consider public roads covered under both of these provisions. Therefore, the FHWA includes this language to reiterate that the data used for the performance measures needs to include all public roads in the State regardless of ownership or functional classification.

Section 490.205 Definitions

The FHWA proposes to include a definition for "5-year rolling average," because the FHWA proposes that State DOTs and MPOs use this information in calculating the performance measures for carrying out the HSIP. The 5-year rolling average is the average of five individual, consecutive annual points of data for each proposed performance measure (e.g., 5-year rolling average of the annual fatality rate). Using a multiyear average approach does not eliminate years with significant increases or decreases. Instead, it provides a better understanding of the overall fatality and serious injury data over time. The 5-year rolling average also provides a mechanism for accounting for regression to the mean. If a particularly high or low number of fatalities and/or serious injuries occur in 1 year, a return to a level consistent with the average in the previous year may occur.

[35] Highway Performance Monitoring System, FHWA Office of Policy Information. *http://www.fhwa.dot.gov/policyinformation/hpms/nahpms.cfm.*

The FHWA considered annual data, and 3-, 4-, and 5-year rolling averages, evaluating each of these options against the data currently available for all States. States with a small number of fatalities may see wide fluctuations in the number of fatalities from year to year. For those States, a rolling average would reduce short term fluctuations and highlight long term trends. A 5-year rolling average provides a balance between the stability of the data (by averaging multiple years) and providing an accurate trend of the data (by minimizing how far back in time to consider data).

The SHSOs have voluntarily been using a 3- to 5-year rolling average for fatalities, fatality rate, and serious injuries since 2010. Currently in NHTSA's HSP, SHSOs are required to establish performance measures for fatalities, fatality rate, and serious injuries using a 3- to 5-year rolling average. The SHSOs select the rolling average that is appropriate for their State depending on factors unique to each State. This NPRM proposes that all State DOTs use the same 5-year rolling average time period in the HSIP. In proposing that performance measures common to the State's HSP and the HSIP be aligned, SHSOs and State DOTs would be required to use the same rolling average period for common performance measures. Such a requirement in the HSP would be subject to the GHSA coordination process NHTSA must follow under MAP–21.

Stakeholders are encouraged to comment on whether a 3-, 4- or 5-year rolling average should be required for the HSIP performance measures. Stakeholders are also encouraged to comment on whether the use of moving averages is appropriate to predict future metrics.

The FHWA's objective is for State DOTs to establish achievable performance targets that focus on improving safety results. State DOTs that do not achieve or have not made significant progress toward achieving their targets would be subject to restricted obligation authority for use only on HSIP projects and the establishment of an implementation plan pursuant to 23 U.S.C. 148(i) and implemented under section 490.211(c).

The FHWA proposes to add a definition of "Fatality Analysis Reporting System (FARS)" because it would be used to determine if a State has achieved its target and, if necessary, as part of the evaluation of whether a State DOT has made significant progress toward achieving its target. The proposed definition clarifies that final FARS data will be used.

The FHWA is proposing a definition of "historical trend line" because it would be an element of FHWA's evaluation of whether a State DOT has made significant progress toward achieving its target. The FHWA proposes the use of 10 years of data in order to provide sufficient historical context for the analysis and projection. Including more years of data would inappropriately impact the analysis by incorporating factors that are no longer relevant. Including fewer years of data would provide an insufficient foundation upon which to conduct the analysis.

The FHWA proposes a definition for "KABCO" because FHWA would be requiring States to begin reporting serious injuries by using the '(A)' coding convention on the KABCO injury classification scale. For serious injuries reported prior to adoption of MMUCC, latest edition, States would use a set of conversion tables to convert data to a consistent serious injury '(A)' coding classification on the KABCO scale. For data reported in compliance with MMUCC, latest edition, States would report data according to the "Suspected Serious Injury (A)" definition and attribute. The conversion tables, developed by NHTSA, are included in the docket and would be used to convert State serious injury crash data to a consistent KABCO coding convention.

Developed by the National Safety Council in 1976, the KABCO is a system used to standardize the coding for the level of the injury severity for any person involved in a crash as determined by law enforcement at the scene. The KABCO is a coding and classification scale that used, or in some cases still uses, the following classifications for the injury codes: K-fatality, A-incapacitating injury, B-non-incapacitating injury, C-possible injury, O-no injury. However, different agencies may use different classifications for injury codes (e.g., "A" for incapacitating injury or "A" for suspected serious injury) and different definitions for each injury code (e.g. in one agency a serious injury is defined as "an injury other than a fatal injury which results in broken bones, dislocated or distorted limbs, severe lacerations, or unconsciousness" and in another agency a serious injury is defined as "an injury, other than a fatal, which prevents the injured person from walking, driving or normally continuing the activities which he was capable of performing prior to the motor vehicle traffic accident." Still, KABCO is an effective tool used to standardize injury severity across jurisdictions by law enforcement officers investigating and reporting on crashes at the scene.

The FHWA recognizes that States currently use a wide variety of coding conventions and associated definitions to report on injury severity. In order to collect and use the most consistent data to support the National Goals, the FHWA proposes that the highest severity injury category in the State's motor vehicle crash database would conform to the KABCO injury code '(A)'. To conform, the State would convert the injury crash data using the conversion tables developed by the NHTSA. The NHTSA developed an initial set of KABCO conversion tables to enable sampling in areas of the State where NHTSA collects injury crash data for the National Automotive Sampling System (NASS). For the purposes of this rulemaking, NHTSA has created similar tables, using the NASS methodology, for all States, and FHWA will make the tables available for States to use to report serious injury data. The FHWA recognizes that the conversion tables cannot account for all past and current differences between State definitions of injury levels. However, they will provide the most consistent available data for serious injuries for the States' past and current crash data until all States comply with the MMUCC requirement proposed in this rule.

The FHWA proposes a definition for "made significant progress" to distinguish that the FHWA would not use the statistical definition of the term "significant" to determine whether a State has made significant progress toward achieving their safety performance targets under 23 U.S.C. 148(i). Recognizing that there is a limit to the direct impact the State can have on safety outcomes, the risk in setting targets, and the resultant difficulty in determining a projected appropriate level of progress for the State DOT, the FHWA is proposing to use a specific set of calculations to determine whether a State DOT has made significant progress. Those calculations are described in Section 490.211, Determining Whether a State DOT has Made Significant Progress Towards Achieving Performance Targets.

The FHWA proposes a definition for the "number of fatalities" because it would be used to establish one of the measures for State DOTs and MPOs to use to assess safety performance related to fatalities and for the purpose of carrying out the HSIP. The FHWA also proposes a definition for the "number of serious injuries" because it would be used to establish one of the measures for State DOTs and MPOs to use to assess

safety performance related to serious injuries for the purpose of carrying out the HSIP.

The FHWA is proposing a definition of "prediction interval" because it would be an element of the evaluation of whether a State DOT has made significant progress toward achieving its target. The FHWA proposes to use the term prediction interval as it is applied for statistical evaluation.

The FHWA proposes a definition for "projection point" because it would be an element of FHWA's evaluation of whether a State DOT has made significant progress toward achieving its target.

The FHWA proposes a definition for the "rate of fatalities" because it would be used to establish one of the measures for State DOTs and MPOs to use to assess safety performance related to fatalities for the purpose of carrying out the HSIP. The FHWA also proposes a definition for the "rate of serious injuries" because it would be used to establish one of the measures for State DOTs and MPOs to assess as a measure for safety performance related to serious injuries for the purpose of carrying out the HSIP.

The FHWA also proposes a definition of "serious injuries." In defining the term "serious injuries," the FHWA recognizes there are many disparities between States' definitions of serious injuries and the coding convention used to report them. These discrepancies have long been recognized as a problem in collecting and analyzing data at the national level, and may be a problem in measuring progress toward the national goal of "significantly reducing fatalities and serious injuries on all public roads." [36] The proposed definition would result in a consistent definition of "serious injuries," which would standardize and improve the quality of data, and improve the ability to evaluate State DOT and national progress in achieving safety on the Nation's roads.

The FHWA proposes that the definition and attribute for "serious injuries" is a "'suspected serious injury' (A)" as identified in the latest edition of the MMUCC.[37] The MMUCC definition of a suspected serious injury (A) is any injury, other than fatal, which results in one or more of the following:

- Severe laceration resulting in exposure of underlying tissues, muscle, organs, or resulting in significant loss of blood;
- Broken or distorted extremity (arm or leg);
- Crush injuries;
- Suspected skull, chest, or abdominal injury other than bruises or minor lacerations;
- Significant burns (second and third degree burns over 10 percent or more of the body);
- Unconsciousness when taken from the crash scene; or
- Paralysis.

The FHWA proposes that States would convert to KABCO, through use of the NHTSA conversion tables, only the serious injury crash data necessary to comply with the reporting requirements under 23 CFR 924 that are not compliant with the proposed serious injury definition within 18 months of the effective date of this rule. The FHWA also proposes that States must use the MMUCC, latest edition, definition and attribute for "suspected serious injury" within 18 months of the effective date of this rule. Depending on the effective date of this rule, the date requirements may be modified in order to align with the HSIP reporting cycle. As the MMUCC definition uses the KABCO scale, a State DOT would be in compliance with this definition if a State converts to the MMUCC definition for "suspected serious injury" prior to the 18-month requirement.

However, for data in the State crash database that was not MMUCC compliant, the State would convert its serious injury data to KABCO through use of the NHTSA serious injury conversion tables.

The FHWA considered the Abbreviated Injury Scale (AIS), the Maximum Abbreviated Injury Scale (MAIS), the International Statistical Classification of Diseases and Related Health Problems (ICD), and the Injury Severity Score (ISS) as potential coding conventions and definitions for reporting Serious Injuries data to replace MMUCC and KABCO. These injury classification systems are not being proposed because they would not offer the ease and opportunity to convert historical and future data into a consistent framework such as is available in using KABCO, NHTSA conversion tables, and MMUCC.

Those agencies that would need to comply with this requirement (e.g., State DOTs, SHSOs, law enforcement agencies) would not be expected to have the ability to use systems such as AIS, ICD, or ISS at the crash scene. Use of each of these systems would require either individual medical follow-up for each person injured in a crash, or some sort of manual or electronic linkage of crash records to hospital inpatient and emergency department records with injury diagnoses. The FHWA expects the burden and time to set up such systems would be considerably greater than it would be for States to comply with the latest edition MMUCC's Suspected Serious Injury definition as proposed in this rulemaking. Therefore, under this rulemaking, the FHWA would not require States to gather level of injury assessments from hospitals or other emergency medical service providers. As the MMUCC is a recommended standard for law enforcement crash reports and uses the KABCO scale, its definition was determined to be most appropriate for the immediate purposes of this proposed rule. The FHWA solicits comment on whether some other injury classification and coding system would be more appropriate.

Section 490.207 National Performance Measures for the Highway Safety Improvement Program

In section 490.207(a), FHWA proposes to describe the four performance measures for the purpose of carrying out the HSIP under 23 U.S.C. 150. The four performance measures would include: 1) number of fatalities, 2) rate of fatalities, 3) number of serious injuries, and 4) rate of serious injuries. The FHWA also proposes to specify that each performance measure would be based on the calendar year, rather than a State's fiscal year or the Federal fiscal year, because safety statistics are already reported by calendar year.

In section 490.207(b), FHWA proposes the use of a rolling average for each of the performance measures and specifies that only the total number be rounded to the hundredth decimal place. The FHWA proposes the use of the hundredth decimal place because the industry standard in FARS for reporting fatality crash rates is to the hundredth decimal place. As FARS reports fatality rates by 100 million VMT, the FHWA proposes that the term "VMT" used in the calculation of fatality and serious injury rates also refer to 100 million VMT, rather than "per vehicle mile traveled" as expressed in 23 U.S.C. 150(c)(4).

The following items describe the calculation for each of the four performance measures. In subparagraph (1), the FHWA proposes that the performance measure for the number of fatalities would be the 5-year rolling average of the total number of fatalities for each State and would be calculated by adding the number of fatalities for the most recent 5 consecutive calendar years in which data are available and dividing by 5. As stated in the definitions section, the total number of fatalities for each State would be based

[36] 23 U.S.C. 150(b).

[37] The Model Minimum Uniform Crash Criteria, available at: *http://www.mmucc.us/.*

on the data reported by the FARS database for each calendar year. The FARS database is recognized as the standard for reporting fatalities and is already used by the State DOTs and the DOT.

In subparagraph (2), the FHWA proposes that the performance measure for fatalities per VMT would be the 5-year rolling average of the State's fatality rate per VMT and would be calculated by first calculating the number of fatalities per 100 million VMT for each of the most recent 5 consecutive years in which data are available, adding the results, and dividing by 5. As stated in the definitions, the VMT is as reported by a State DOT to the HPMS (expressed in 100 million vehicle miles) in a calendar year.

In subparagraph (3), the FHWA proposes that the performance measure for the number of serious injuries would be the 5-year rolling average of the total number of serious injuries for each State, and would be calculated by adding the number of serious injuries for the most recent 5 consecutive years in which data are available and dividing by 5.

In subparagraph (4), the FHWA proposes the performance measure for the number of serious injuries per VMT would be the 5-year rolling average of the total number of serious injuries per VMT, and would be calculated by first calculating the number of serious injuries per 100 million VMT for each of the most recent 5 consecutive years in which data are available, adding the results, and dividing by 5. The number of serious injuries would be equivalent to that in subparagraph (3) and the rate would be determined by VMT as reported by HPMS (expressed in 100 million vehicle miles) in a calendar year.

In section 490.207(c), the FHWA proposes that by the effective date of this rule, serious injuries shall be coded (A) in the KABCO injury classification scale through use of the NHTSA serious injuries conversion tables; and that within 18 months of the effective date of this rule, serious injuries must be determined using the latest edition of MMUCC.

Finally, in section 490.207(d), the FHWA recommends, but would not require, that States prepare themselves so that no later than calendar year 2020, serious injuries data is collected through and reported by a hospital records injury outcome reporting system that links injury outcomes from hospital inpatient and emergency discharge databases to crash reports. An example of a crash outcome data linkage system is the NHTSA Crash Outcome Data Evaluation System (CODES).

The DOT is an active liaison to the NCHRP Project 17–57 *Development of a Comprehensive Approach for Serious Traffic Crash Injury Measurement and Reporting Systems.* The project's goals are to identify an injury scoring system for further consideration, develop a roadmap to assist States in developing and implementing an interim system, and ultimately develop a State-based framework to perform comprehensive linkage of records related to motor vehicle crashes resulting in serious injuries, and incremental steps and priorities for achieving the linkage (*http://apps.trb.org/cmsfeed/TRBNetProjectDisplay.asp?ProjectID=3179*). The DOT anticipates that this project will be completed by 2014, and the recommendations could then be effectively implemented in all States. To the extent possible, DOT would work with States that implement a data linkage system prior to the recommended date. This rulemaking would not prohibit a State from using a data linkage system like CODES, but this rulemaking would require States to use the MMUCC definition of "suspected serious injury" and the KABCO system, through use of the NHTSA conversion tables, for reporting serious injuries data.

In summary, defining serious injuries in a manner that would provide for greater consistency requires:

(1) a common coding convention;

(2) a consistent definition of a serious injury; and

(3) a method to accurately determine the severity level of an injury.

This rulemaking proposes, with reference to the above list, the establishment of items 1 and 2, and a recommended approach for item 3. More specifically, this rulemaking proposes: (1) KABCO as the required convention to code a serious injury as "A" using conversion tables developed by NHTSA; and (2) a requirement to use the MMUCC definition of a "suspected serious injury" to define what injuries qualify as a serious injury. This rulemaking would not propose a required use of a single method to accurately determine the level of injury but recommends that States prepare to use a crash to medical outcome data linkage methodology. This rulemaking would not prohibit a State from using such an approach before or after the effective date of this rule to determine the severity of injuries.

The DOT also recognizes that as serious injury data is migrated to the MMUCC definition, variances may occur in the data collected and reported by States and that States should make necessary adjustments in establishing targets to accommodate these changes.

Section 490.209 Establishment of Performance Targets

The FHWA proposes in section 490.209(a) for State DOTs to establish quantifiable targets for each performance measure identified in section 490.207(a). The declared policy under 23 U.S.C. 150(a) is to transform the Federal-aid highway program by refocusing on national transportation goals and increasing accountability. Furthermore, the first national goal under 23 U.S.C. 150(b)(1) is to "achieve a significant reduction in traffic fatalities and serious injuries on all public roads." To this end, the FHWA strongly encourages State DOTs to establish targets that represent improved safety performance in order to support the national goals.

Consistent with the objectives in the NHTSA IFR, the FHWA is proposing in subparagraph (1) that the targets under this section be identical to the targets established for common measures reported in the States HSP, subject to the GHSA coordination process NHTSA must follow under MAP–21. The FHWA proposes in subparagraph (2) that the performance targets established by the State represent the safety outcomes anticipated for the calendar year following each HSIP annual report.

The FHWA recognizes that State DOTs would use the most current data available to them in order to establish targets required in this rule. However, as specified in section 490.211(a), the FHWA proposes to use the data in the final FARS database and HPMS to assess the State DOTs' performance targets for the fatality measures. State DOTs should recognize there are differences in the final FARS and HPMS databases and their most current data, in particular the potential time lag in the data needed for establishing targets.

For the serious injuries number measure, this lag is not an issue as this measure and reported outcomes are based on data contained in the State's motor vehicle crash database. However, there is a time lag for the remaining proposed safety measures.

The current time lag (time period between the end of the calendar year in which the data were collected to the date the data is available in the national system for the final FARS and HPMS data) is approximately 24 months. The FHWA recognizes the challenges to State DOTs in dealing with the uncertainty of data available in national data sources and how this uncertainty

would need to be considered in the target establishment process.

The following scenario is provided as an example to illustrate the potential time lag between State and national data sources for the fatality number measure and the fatality and serious injury rate measures. Targets that represent anticipated fatality outcomes for Calendar Year (CY) 2017 would need to be established by the State DOT and reported in its 2016 HSIP annual report by August 31, 2016. The State DOT may have current fatality data available through its motor vehicle crash database to develop targets. However, the fatality data reported by FARS, which would be used to assess fatality outcomes, would not be current due to the time lag needed to process, review, and validate data in FARS. Likewise, the VMT data available to calculate rate-based measures in the HPMS would face similar time lag issues. For this example, the most current information available in FARS and HPMS in August 2016 would be based on CY 2013 data. Therefore, the most current reported performance outcome for fatalities for the State would represent the data reported from 2009–2013 (data needed to calculate the 2013 5-year rolling average for fatalities). The FHWA recognizes the challenge this time lag would present to State DOTs as the State DOT would need to establish a target that represents a 5-year rolling average for the period from 2013–2017. The DOT seeks comments on whether this time lag is an issue, any impacts it may have on a State DOT's ability to establish targets, and any suggestions that can help address this issue.

The FHWA proposes in subparagraph (3) that State DOTs establish targets that represent the safety performance of all public roadways within the State boundary regardless of ownership and functional classification. The FHWA recognizes that there is a limit to the direct impact the State DOT can have on the safety outcomes resulting on all public roadways and that the State DOT would need to consider this uncertainty in their establishment of targets.

The FHWA proposes in subparagraph (4) that State DOTs begin reporting targets in the HSIP annual report that is due on or after 1 year from the effective date of this final rule and then each year thereafter in subsequent HSIP annual reports.

The FHWA recognizes that in its determination of targets, the State DOT would need to consider a wide range of factors that may either constrain its ability to impact outcomes or may adversely impact outcomes (such as the population growth of an area). State DOTs should consider these factors in establishing targets and should provide an explanation as to how the factors were addressed in reporting their targets in the HSIP annual report.

In subparagraph (5), the FHWA proposes that for the purpose of evaluating serious injury measures targets, the State DOT would report each year, in their HSIP Report, 10 years of serious injury data for the equivalent years that final FARS data were available at the time the target was established.

As proposed in subparagraph (6), the FHWA believes that an annual target establishment frequency would not present a need for State DOTs to adjust or modify their targets during the year. It is anticipated that adjustments would be made through the establishment of new targets each year as State DOTs would be required to establish new targets incorporating the next year of performance.

In section 490.209(b), the FHWA proposes that State DOTs may, as appropriate, establish one additional performance target for all urbanized areas and one additional performance target for all non-urbanized areas within the State for each performance measure. Thus, the established urbanized target and non-urbanized targets would cover the entire State boundary. The FHWA proposes that State DOTs may use different performance targets for urbanized and non-urbanized areas to implement 23 U.S.C. 150(d)(2). For example, in accordance with section 490.209(a), a State DOT would be required to establish four performance targets for: (1) number of fatalities; (2) rate of fatalities; (3) number of serious injuries; and (4) rate of serious injuries. In addition to these four performance targets, the State DOT may elect to also establish different performance targets for urbanized and non-urbanized areas. Should the State elect to do so, the State would be required to establish both urbanized and non-urbanized performance targets. As a result, while a State DOT will establish a minimum of four safety performance targets, it could choose to establish 6, 8, 10, or 12 safety performance targets, depending on which, if any, performance measures it chooses to establish urbanized and non-urbanized targets.

Historically, the Census has defined urbanized areas every 10 years. The FHWA recognizes that each Census defined urbanized area can be adjusted to facilitate the planning process, and this could be done on varying schedules. Designation of new urbanized areas or changes to the boundary of existing urbanized areas may lead to changes in the functional classification of the roads, which in turn may affect measures and the target achievement or making significant progress toward achieving targets. The FHWA intends to issue guidance regarding the voluntary establishment of performance targets for urbanized and non-urbanized areas. If a State DOT chooses to establish separate urbanized and non-urbanized performance targets, it would increase the number of performance targets that it reports. At a minimum, State DOTs would be required to establish four performance targets each year (one for each performance measure). State DOTs can increase the number of targets that are established if they elect to break out urbanized and non-urbanized areas. Some State DOTs may find it beneficial to establish separate performance targets for urbanized and non-urbanized areas to highlight the different nature of, causes of, and countermeasures for crash types in those areas.

In section 490.209(c), the FHWA proposes that MPOs establish targets to address the performance measures established in section 490.207(a), where applicable, each time the State DOT reports targets in their HSIP annual report. The FHWA proposes in subparagraph (1) that not later than 180 days after issuance of the State's HSIP annual report, which establishes the State DOT targets (section 490.213(a)), the MPO establish targets. The FHWA anticipates that State DOTs and MPOs would coordinate on the establishment of targets as required under 23 U.S.C. 134(h)(2)(B)(i)(II) and 23 U.S.C. 135(d)(2)(B)(i)(II). The MPO and State DOT should agree on how they would coordinate on the reporting of targets. The FHWA recognizes the need for State DOTs and MPOs to have a shared vision on expectations for future safety performance in order for there to be a jointly owned target establishment process. It is anticipated that State DOTs and MPOs would collectively identify strategies to reduce or eliminate safety hazards and would jointly decide how these strategies would impact performance outcomes across the State DOTs and within different areas of the State. The FHWA proposes in subparagraph (2) that after the MPO reports these targets to the State, the FHWA expects that, upon request, the State DOT can provide the MPO's most recently submitted targets to the FHWA in accordance with the Metropolitan Planning Agreement, developed under 23 CFR 450.

The FHWA recognizes the burden on MPOs to establish their own performance targets, especially where

the targets are annual targets. As such, the FHWA proposes in subparagraph (3) that MPOs establish targets by either agreeing to plan and program safety projects so that they contribute toward the accomplishment of 1 year safety targets established by the State DOT, or committing to a quantifiable 1 year safety target specific to the roadways within the metropolitan planning area.

Recognizing that the resource level and capability of some MPOs to reliably predict safety performance outcomes varies across the country, the FHWA is proposing an approach that would give flexibility for MPOs to establish targets by supporting the State DOT targets for performance through their investment decision making. Further, the FHWA recognizes that MPOs may need to work jointly with relevant State DOTs to access and analyze crash records for their planning area. Consequently, the MPOs may establish their targets using either of the proposed options in proposed subparagraph (3). The FHWA proposes in subparagraph (4) that, the established MPO targets under subparagraph (3) represent all public roadways within the metropolitan planning area boundary regardless of ownership or functional classification.

Annual target establishment for safety performance is being proposed to align the target establishment requirements of 23 U.S.C. 150 with those of 23 U.S.C. 402(k), subject to the GHSA coordination process NHTSA must follow under MAP–21. The FHWA recognizes that an annual frequency for target establishment is not consistent with typical planning cycles for MPOs and, as such, expects the State DOT to closely coordinate with their partner MPOs to make the target establishment decision. The FHWA will propose to provide for a longer target establishment time horizon, which is more aligned with the typical metropolitan planning cycle, for the other measures in which targets are required to be established under 23 CFR 450.

Pursuant to 23 U.S.C. 134(h)(2)(B)(i)(II) and 23 U.S.C. 135(d)(2)(B)(i)(II), the FHWA proposes in section 490.209(d) that State DOTs coordinate with relevant MPOs in the selection of targets to ensure consistency, to the maximum extent practical. The requirements to consider this coordination in the planning process should be addressed as State DOTs and MPOs work together to jointly identify performance expectations for the State and, if appropriate, specific areas of the State. The DOT recognizes the challenges associated with the coordination of quantifiable targets between the State and relevant MPOs due to the differences in the geographical boundaries of areas in which targets would be established. The State DOT, as discussed previously in this section, would be required to establish a quantifiable target for the entire State boundary and would have the option of establishing 2 additional quantifiable targets: 1 for all urbanized areas, and 1 for all non-urbanized areas within the State. Additionally, an MPO would have the option to establish a quantifiable target for their metropolitan planning area. One of the coordination challenges facing States and MPOs would be how they consider the different geographical boundaries of urbanized areas and metropolitan planning areas, especially in cases where urbanized and metropolitan planning areas cross multiple State boundaries. To illustrate these differences the following is provided regarding the target establishment boundary differences that could exist in the State of Maryland today.

- Urbanized Areas: Based on the 2010 Census, 11 urbanized areas intersect or are contained within the geographic boundary of the State of Maryland. Of these areas, 5 extend into neighboring States.
- Metropolitan Planning Areas: Currently, 6 metropolitan planning areas intersect or are contained within the geographic boundary of the State. Of these areas, 4 extend into neighboring States.
- Statewide Urbanized Area Target Extent: A State DOT target for urbanized areas would represent the anticipated safety outcome of all public roads in those 11 urbanized areas within the geographic boundary of the State of Maryland.
- MPO Target Extent: Each of the 6 MPOs would establish targets for representing the anticipated safety outcome of relevant metropolitan planning area regardless of State boundary. In the case of Maryland, the metropolitan planning area boundaries used by MPOs to establish targets will represent an area that is larger than the area used by the State DOT to establish an urbanized target and will represent areas in several adjoining States.

As illustrated above, many differences in target setting boundaries could exist that would require State DOTs and MPOs to coordinate on quantifiable targets between them using the proposed target setting requirements in this section. As part of the coordination process, State DOTs and MPOs are encouraged to consider how the data will be reported. The FHWA is seeking comment on alternative approaches that could be considered to effectively implement 23 U.S.C. 134(h)(2)(B)(i)(I) and 23 U.S.C. 150(d)(2) considering the need for coordination required under 23 U.S.C. 134(h)(2)(B)(i)(II) and 23 U.S.C. 135(d)(2)(B)(i)(II).

Section 490.211 Determining Whether a State DOT Has Made Significant Progress Toward Achieving Performance Targets

In section 490.211, the FHWA proposes the method in which the FHWA would determine whether a State DOT has met or made significant progress toward the achievement of its HSIP performance targets. Although this determination could directly impact State DOTs, as discussed in this section, MPOs could also be indirectly impacted as a result of the link between metropolitan and statewide planning and programming decision making. This rulemaking discusses the approach that would be taken by the FHWA to assess State DOT safety performance progress, but it does not include a discussion on the method that may be used by the FHWA to assess the safety performance progress of MPOs. Interested persons should refer to the updates to the Statewide and Metropolitan Planning regulations for any discussions on the review of MPO performance progress.

In section 490.211(a), the FHWA proposes that the determination for having achieved or made significant progress toward achieving the performance targets would be based on FARS data for the fatality number, FARS and HPMS data for the fatality rate, State reported data for the serious injuries number, and State reported data and HPMS data for the serious injury rate. The HSIP report, as proposed in 23 CFR 924, would require State DOTs to report general highway safety trends for the number and rate of fatalities and serious injuries. The State reported serious injury data would be taken from the HSIP report. The FHWA also proposes that reporting of safety performance targets be done as part of the HSIP report.

In section 490.211(b), the FHWA proposes that it would evaluate achievement of each performance target. The FHWA considered a number of different approaches to implement the State DOT performance targets provision specified in 23 U.S.C. 148(i). This provision requires State DOTs that have not achieved or made significant progress toward achieving the State DOT performance targets obligate a portion of their HSIP funding in accordance with 23 U.S.C. 148(i)(1) only for highway safety improvement projects, and to develop and submit an

annual implementation plan to document how State DOTs intend to improve performance using HSIP funds. The FHWA recognizes the risks associated with target establishment and the factors that could impact the ability to achieve a target that could be outside of a State DOT's control. The FHWA considered these risks and factors in its evaluation of different approaches to implement this provision. For example, a number of factors were raised as part of the performance management stakeholder outreach sessions regarding target establishment and progress assessment, such as the impact of funding availability on performance outcomes, the reliability of the current state-of-practice to predict outcomes resulting from investments at a system level, the impact of uncertain events or events outside the control of a State DOT on performance outcomes, the need to consider multiple performance priorities in making investment trade-off decisions, and the challenges associated with balancing local and national objectives.

The FHWA wants to implement an approach that considers the risks to a State DOT in achieving a target while meeting the need to provide for a fair and consistent process to determine compliance with this statutory provision. The FHWA realizes that there are some factors outside of a State's control (e.g. natural disaster, weather, technological safety improvements) that could impact the ability to achieve a target. The use of a rolling average as the basis for all of the measures will smooth the impacts of those factors that could result in any single year period.

Basing the assessment on quantifiable results would ensure a fair and consistent approach to making the determination. The FHWA believes that this principle is particularly important as the consequence for non-compliance will further restrict how a State DOT can use its HSIP funding. In developing the criteria for evaluating significant progress toward achieving performance targets, the FHWA considered how output measures (e.g., miles of rumble strips, number of impaired driving arrests) could be used in the determination. Although output measures are important in delivering the Federal-aid highway program, they do not sufficiently reflect the purpose of the HSIP as provided in 23 U.S.C. 148(c), or the "National Goals" in 23 U.S.C. 150(b)(1), which is to achieve a significant reduction in traffic fatalities and serious injuries. Output measures were therefore excluded from the proposed metric.

Following the principles above, the FHWA is proposing the following approach to assess if a State DOT has achieved or has made significant progress toward the achievement of their targets. The FHWA would evaluate each State DOT's progress toward achieving their performance targets based on the final FARS data for fatality performance targets, the State DOT's reported results in the HSIP annual report for serious injury performance targets, and the HPMS for performance targets for rate-based measures.

The FHWA proposes to use national datasets that are considered standards for statistics to base the determination of a State DOT's progress toward the achievement of targets so the process is conducted uniformly using a consistent and credible data set.

The FHWA recognizes that there is a time lag in receiving the final data from FARS and HPMS. Consequently, the FHWA would make appropriate timing adjustments to comply with the requirements of 23 U.S.C. 148(i). As an example, when a State DOT establishes their target in August 2016 for CY 2017, the latest available FARS and HPMS data would be for CY 2013, since that data becomes available in December 2015. The final FARS and HPMS data for CY 2017 would be available in December 2019. The FHWA would review and evaluate this data and notify State DOTs if they achieved or made significant progress toward achieving their performance targets by March 1, 2020. This time frame is necessary to ensure that the assessment of whether a State achieved or made significant progress toward achieving targets is conducted based on a final data set (final FARS) for the fatality number, fatality rate, and serious injury rate measures. The FHWA proposes the use of this data to ensure that the requirements in 23 U.S.C. 148(i) are applied consistently and to ensure that the requirements are not imposed on States in error.

As proposed in section 490.211(b), the FHWA would review each performance measure to determine if each target was achieved. Targets that have been achieved would not undergo any additional review or evaluation. As proposed in subparagraph (1), the FHWA would only evaluate performance targets not achieved to determine if the State DOT made significant progress toward achieving the target.

The FHWA proposes in subparagraph (2) to evaluate significant progress [38] for each performance target not achieved. First, the FHWA would determine a historical trend line based on FARS, State reported serious injury, and HPMS data for the State. In determining the historical trend line, the FHWA would plot 5-year rolling averages for 10 consecutive years using the most recent data available at the time the State sets the target. For example, the historical trend line for the first assessment of significant progress under this regulation would consist of six data points from the following 5-year rolling averages: 2004–2008, 2005–2009, 2006–2010, 2007–2011, 2008–2012, 2009–2013.

Trend lines are used to chart the prevailing direction of an event or events (e.g., fatalities or serious injuries by number or rates) and can be projected forward to predict future events. The historical trend line proposed to evaluate significant progress is a linear regression trend line. The FHWA considered different options for the historical trend line as well as time series analysis. We identified challenges with each option, particularly related to the use of rolling average data and the number of data points required to obtain meaningful results. Since FHWA must establish a uniform procedure to use for all States to assess, if necessary, whether the State made significant progress, the FHWA proposes to use a linear regression trend line. Stakeholders are encouraged to comment on the appropriateness of the trend line methodology proposed for the significant progress analysis.

The FHWA proposes that 10 years of serious injury data, for equivalent years that final FARS data were available at the time the target was established, be made available for purposes of determining a historical trend line. Ten years of historical data would provide a sufficient set of data points for the purposes of projecting out for future years while balancing the need to use recent data.

After the FHWA determines the historical trend line, the FHWA would then plot a projection point based on the historical trend line data and calculate the prediction interval for the projection point.

When predicting a future point (projection) or estimate, there is an element of uncertainty. A prediction interval acknowledges these uncertainties and provides a range in

[38] The methodology is based on Chapter 3 in Neter, Wasserman, and Kutner (*Applied Linear Statistical Models*, 3rd Edition, 1990).

which the actual point should fall. The prediction percentage describes the probability that the actual point will fall within the given range. The determination of the interval size is a statistical process that includes consideration of several factors including previous years of actual data.

There are any number of variables that impact safety performance, many of which are outside the control of the State DOT. For the "rate" measures, the FHWA further recognizes that it is a projection (e.g., number of fatalities) divided by a projection (i.e., VMT), and as such, there is even less certainty in the projection. Recognizing the uncertainty in setting the projection point, the FHWA proposes that a 70 percent prediction interval be used and that the actual outcome fall at or below the upper bound of that interval for significant progress to be achieved. If the actual outcome is above the upper bound of the prediction interval for the projection point, significant progress was not achieved. The FHWA proposes a 70 percent prediction interval to assess significant progress because a prediction interval below 70 percent would be too small to allow for the uncertainty in the prediction. Similarly, prediction intervals above 70 percent belie the fact that a projection point is merely a projection. The FHWA seeks comment on whether the underlying methodology of the prediction interval is appropriate. An Example Application describing how the historical trend line, projection point, and prediction interval are developed to assess achievement of significant progress is presented at the end of this section.

In subparagraph (3), the FHWA proposes to specify that a State DOT is determined to overall have achieved or made significant progress toward achieving its performance targets when at least 50 percent of the total number of performance targets the State DOT established for the respective reporting year are achieved or the FHWA has determined the State DOT has made significant progress toward achieving its targets under proposed section 490.211(b). This means that if a State DOT has four performance targets, then the State DOT would need to achieve or make significant progress toward achieving at least two of those targets in order for the State DOT to be evaluated as overall having achieved its targets or made significant progress toward achieving its targets in carrying out the HSIP. As an example, if a State DOT chooses to establish urbanized and non-urbanized performance targets for the number of fatalities and for the rate of serious injuries, it would have established eight performance targets. The State DOT would need to have achieved or made significant progress toward achieving at least four of those targets for the FHWA to determine a State has overall achieved its targets or made significant progress toward achieving its targets. The FHWA proposes at least 50 percent for the achievement of overall significant progress because it would provide a meaningful way to evaluate progress while providing State DOTs the flexibility to establish aggressive targets to achieve the national goals defined in 23 U.S.C. 150. The FHWA seeks comment on whether 50 percent is the appropriate threshold for determining if a State has overall achieved or made significant progress toward achieving its performance targets.

In section 490.211(c), the FHWA proposes that if it determines that a State has not overall achieved or made significant progress toward achieving safety performance targets, the State DOT would need to comply with 23 U.S.C. 148(i). The provisions in 23 U.S.C. 148(i) require that State DOTs that have not achieved or made significant progress toward achieving safety performance targets must: (1) Use obligation authority only for HSIP projects equal to the HSIP apportionment for the fiscal year prior to the year for which the overall performance targets were not achieved or significant progress was not made, and (2) submit an annual implementation plan that describes actions the State DOT will take to achieve targets based on a detailed analysis, including analysis of crash types. The implementation plan must: (a) Identify roadway features that constitute a hazard to road users; (b) identify highway safety improvement projects on the basis of crash experience, crash potential, or other data-supported means; (c) describe how HSIP funds will be allocated, including projects, activities, and strategies to be implemented; (d) describe how the proposed projects, activities, and strategies funded under the State HSIP will allow the State DOT to make progress toward achieving the safety performance targets; and (e) describe the actions the State DOT will undertake to achieve the performance targets.

The following example illustrates how these provisions could be carried out. A State DOT establishes targets for performance measures for CY 2017. The FHWA would make a determination and inform the State DOT if it achieved or made significant progress toward achieving CY 2017 performance targets by March 1, 2020. This schedule takes into account the time delay in obtaining final FARS and HPMS data, which in this example would not be available until December 2019. State DOTs would have the result of FHWA's evaluation for preparing their HSIP reports for the 2021 reporting cycles, which would be due to the FHWA by August 31, 2020. If a State had not achieved or made significant progress toward its overall 2017 performance targets, then that State DOT would need to use obligation authority in FY 2021 equal to its FY 2016 HSIP apportionment (1 year prior to 2017) for use only on HSIP projects. The State DOT would also need to submit an implementation plan describing the actions that the State DOT will take to achieve its targets.

For any year the FHWA determines that a State DOT has overall achieved or made significant progress toward achieving the performance targets of the State DOT, that State DOT would not be required to use obligation authority or submit an implementation plan for the subsequent year. If, in some future year, the FHWA determines that a State DOT does not overall achieve or make significant progress toward achieving its performance targets, the State DOT would at that time need to submit an implementation plan as well as use obligation authority as required in section 23 U.S.C. 148(i).

In section 490.211(d), as required by 23 U.S.C. 148(i), the FHWA proposes that it will evaluate progress within 3 months of the date that final FARS data is available for the first year State DOTs set performance targets. Because of the delay in availability of final FARS data, the FHWA can conduct the evaluation 3 years after the State DOT establishes the target. The FHWA would continue to evaluate achievement of each performance target every year thereafter.

Section 490.213 Reporting of Targets for the Highway Safety Improvement Program

In section 490.213(a), the FHWA proposes that State DOT reporting of the safety performance measures and targets be done in accordance with 23 CFR part 924. State DOT targets would be reported in accordance with 23 CFR 924.15(a)(1)(iii) in the proposed HSIP regulation (RIN 2125–AF56).

In section 490.213(b), the FHWA proposes that the manner in which MPOs report their established targets be documented within the Metropolitan Planning Agreement, which is regulated under 23 CFR part 450. The MPOs would report their established safety targets to the relevant State DOTs in a manner that is agreed upon by both

parties and documented in the Metropolitan Planning Agreement.

In paragraph (c), the FHWA also proposes that MPOs report baseline safety performance and progress toward the achievement of their safety targets in the system performance report in the metropolitan transportation plan, as provided in 23 U.S.C. 134(i)(2)(C).

Example Application of Proposed Target Assessment and Significant Progress Determination

This fictional example demonstrates the State DOT process for establishing targets and the FHWA process to evaluate whether a State DOT has achieved or made significant progress toward achieving the performance targets of the State DOT in accordance with 23 U.S.C. 148(i). The example explains how the historical trend line, projection point, and prediction interval are developed by the FHWA to assess achievement of significant progress in cases where State performance targets are not achieved. The example assumes an effective date for the rule in the spring of 2015.

Step 1: The State establishes targets and reports them to FHWA.

The State DOT submits its targets for each of the performance measures for CY 2017 in the HSIP report due by August 31, 2016. The targets would be identical for equivalent measures in the HSP, in keeping with section 490.209 and the NHTSA IFR, subject to the MAP–21 requirement that the performance measures in the HSP are coordinated with the GHSA.

The FHWA recognizes that there are numerous methods for developing and establishing performance targets to comply with this subpart. In this example, consistent with 23 U.S.C. 148 and 23 U.S.C. 402, the State DOT uses an evidence-based, data-driven approach to establish its targets for all measures. In doing so, the State DOT recognizes that a new primary seat belt law takes effect in CY 2016 and calibrates its fatality targets by reducing the anticipated number of fatalities for CY 2017. The State DOT makes this calibration to its trend line by using evidentiary data contained in the NHTSA Research Note "States With Primary Enforcement Laws Have Lower Fatality Rates." [39] Based on the passage of the law and information in the Research Note, the State estimates a 10 percent increase in seat belt use rate, which equates to an anticipated reduction of 59 fatalities. The State DOT does not believe other external factors beyond a State's control (e.g. economic conditions, weather patterns, technological safety improvements) will have a significant effect on the crash numbers during the year and did not use these factors to calibrate the trend line further. The State DOT does not elect to set urbanized and non-urbanized targets for any of the performance measures.

Table 1 shows the data available to the State DOT and the targets established for the 2013–2017 period. Note that the target for the fatality number performance measure is less than the projection point to account for the estimated reduction in fatalities in CY 2017 attributable to the passage of a primary seat belt law. The small change in the fatality number, however, did not affect the fatality rate target. For this example, the State DOT had CY 2013 final FARS data available to calculate the 2009–2013 5-year rolling average for the subject measures.

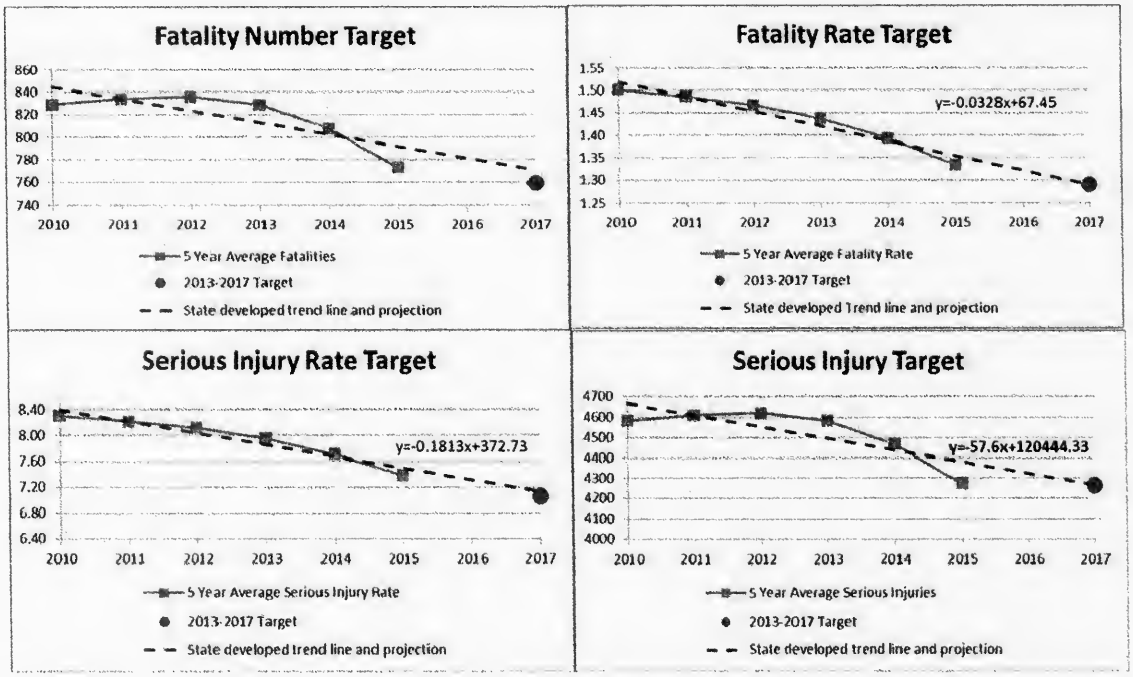
The FHWA recognizes that a State DOT may have partial data to calculate the 2010–2014, 2011–2015 and 2012–2016 5-year rolling averages and thereby estimate a stronger target. For this example, the 2010–2014 and 2011–2015 data is estimated and the 2012–2016 data were not available. Figure 1 shows graphs of the trend lines developed by the State DOT when establishing its targets. In this example, the State DOT does not elect to separate urbanized and non-urbanized measures.

TABLE 1—AN EXAMPLE OF THE DATA AVAILABLE TO A STATE DOT AND THE TARGETS ESTABLISHED FOR CY 2017
[For Illustration Purposes]

	State data for setting CY2017 targets								
Dates for 5-year rolling average	2006–2010	2007–2011	2008–2012	2009–2013	2010–2014	2011–2015	2012–2016	2013–2017 Projection	2013–2007 Target
Calendar year	2010	2011	2012	2013	2014	2015	2016	2017	2017
Number of Fatalities.	629	834	836	829	808	773	Unavailable	770	759
Rate of Fatalities	1.50	1.49	1.47	1.44	1.39	1.33	Unavailable	1.29	1.29
Number of Serious Injuries.	4584	4612	4623	4584	4468	4275	Unavailable	4265	4625
Rate of Serious injuries.	8.31	8.22	8.12	7.95	7.71	7.38	Unavailable	7.05	7.05
VMT (in millions)	55183	56112	56960	57640	57974	57941	Unavailable	N/A	N/A

[39] States With Primary Enforcement Laws Have Lower Fatality Rates, DOT HS 810 923, February 2008, *http://www-nrd.nhtsa.dot.gov/Pubs/810921.pdf.*

Figure 1 An Example of the Trend Lines developed by a State DOT in Establishing Targets (for illustration purposes)



Step 2: FHWA assessment of targets and, if necessary, significant progress.

The FHWA will assess target achievement by the State for CY 2017 beginning in CY 2020 by:

1. Assessing the target for each performance measure.
2. Assessing both the urbanized and the non-urbanized target for each performance measure, if the State elected to establish such targets.
3. If any target is not achieved, assessing whether the State made significant progress for the target.
4. Making an overall assessment for achieving targets and/or made significant progress.
5. Completing the assessment report on progress and submitting it to the State DOT by March 31, 2020.

The FHWA must wait 3 years, until CY 2020, to assess whether CY 2017 targets were achieved because the FARS and HPMS data are not available until that time as explained in the discussion of section 490.211. Note that although the time lag for assessment will remain constant, target achievement will be assessed annually.

Each target will be evaluated through the use of: Final FARS data for the fatality number measure; State DOT data for the serious injuries number measure; final FARS data and HPMS data for the fatality rate measure; and State DOT and HPMS data for the serious injury rate measure. The State data for the serious injury measures will be taken from the serious injury crash data submitted in the State HSIP report, in accordance with section 490.213, in this example, due August 31, 2018. For purposes of evaluating whether the State DOT made significant progress for the serious injury measures, FHWA will use 10 years of serious injuries data for equivalent years that final FARS data were available at the time the target was established.

Table 2 provides the actual final FARS, HPMS, and State data used in this example to assess having achieved or made significant progress toward achieving targets. The FHWA will only use final FARS and HPMS data that was available to the State at the time of target establishment. Similarly, FHWA will use serious injury data for this analysis from the same period of time.

TABLE 2—FINAL DATA FOR ASSESSING TARGET ACHIEVEMENT

[For Illustration Purposes]

CY2017 Final 5-year Rolling Average FARS, HPMS and Serious Injuries Data for Assessing Target Achievement		
	Target	Actual
Number of Fatalities	759	769
Rate of Fatalities	1.29	1.29
Number of Serious Injuries	4625	4599
Rate of Serious Injuries	7.05	7.05

The results are as follows:

1. Fatality Number Measure Target—The State DOT target for this measure was 759 and the actual number was 769, so the State DOT did not achieve this

target. The FHWA will evaluate significant progress.

2. Fatality Rate Measure Target—The State DOT target for this measure was 1.29 and the actual rate was 1.29, so the State DOT achieved this target.

3. Serious Injuries Number Measure Target—The State DOT target for this measure was 4625 and the actual number was 4599, so the State DOT achieved this target.

4. Serious Injury Rate Measure Target—The State DOT target for this measure was 7.05 and the actual rate was 7.05, so the State DOT achieved this target.

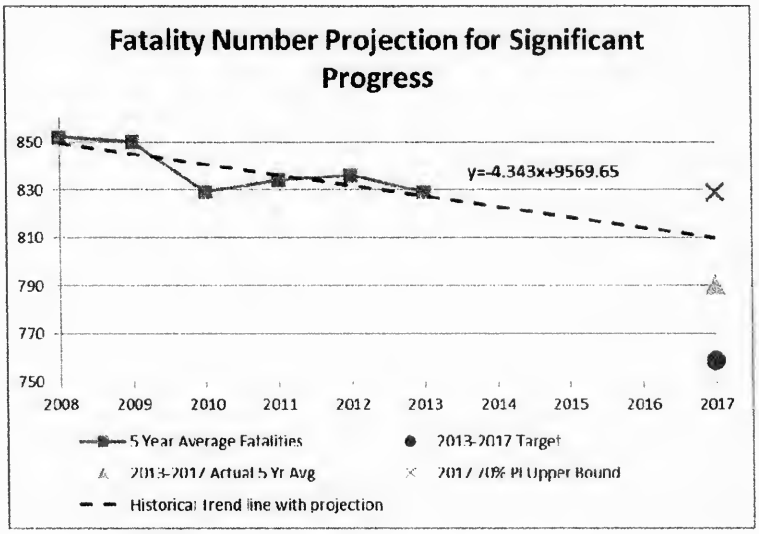
5. If the State DOT had elected to establish urbanized and non-urbanized targets for any of the performance measures, the FHWA would next evaluate whether each of these targets were achieved.

In this case, the State DOT did not achieve its fatality number measure target, so an evaluation of significant progress for that measure is presented below. Although the State DOT has already achieved 50 percent of its targets, the significant progress evaluation is included for illustrative purposes. Note that if the State DOT had elected to establish urbanized and non-urbanized targets for any of the performance measures, the determination of whether the State DOT had already achieved 50 percent of its targets would be based on the total number of safety performance targets set.

The FHWA will develop a historical trend line, projection point, and prediction interval for this analysis. The historical trend line, as provided in section 490.211(b), requires 10 consecutive years of data. This results in six data points derived from consecutive 5-year rolling averages of the final FARS data that were available at the time the target was established. Table 3 provides the data for the assessment of the fatality number target in this example. Figure 2 provides this information as a graph.

TABLE 3—AN EXAMPLE OF THE DATA FOR THE FATALITY NUMBER MEASURE TARGET
[For Illustrative Purposes]

Final FARS 5-year rolling average fatalities, projection, target and upper bound prediction interval data												
2008	2009	2010	2011	2012	2013	2014	2015	2016	2017 Projection	2017 Target	2017 Actual	2017 70% PI Upper Bound
852	850	829	834	836	829	NA	NA	NA	810.10	759	769	825.66



The FHWA calculated the 70 percent prediction interval for this analysis to be ± 15.56.[40] Therefore, the upper bound for the prediction interval for the fatality number measure in this analysis is 825.66. The actual number of fatalities for 2013–2017 5-year rolling average was 769. In this case, the actual number is at or below the upper bound for the prediction interval, so the State DOT made significant progress for this measure.

Finally, the FHWA will evaluate overall achievement or having made significant progress toward achieving performance targets. As required in section 490.211(b)(3), at least 50 percent of the targets must achieve or make significant progress toward achieving the targets, in order for the State DOT to overall achieve or make significant progress toward achieving targets. In this case, all four performance measures achieved or made significant progress toward achieving targets. The FHWA will report this finding to the State DOT by March 31, 2020. If, however, 50 percent of the targets were not achieved or made significant progress, the requirements in section 490.211(c) would need to be applied. The FHWA would also notify the State DOT of such action on or before March 31, 2020.

[40] A document summarizing the steps used to calculate the prediction interval using *Applied Linear Statistical Models*, 3rd Edition, 1990 may be found in the docket.

VI. Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to

examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The DOT has determined that this proposed rule constitutes a significant regulatory action within the meaning of Executive Order (EO) 12866 and is significant within the meaning of the DOT regulatory policies and procedures. This action complies with EO 12866 and 13563 to improve regulation. This action is considered significant because of widespread public interest in the transformation of the Federal-aid highway program to be performance-based, although it is not economically significant within the meaning of EO 12866. The FHWA is presenting a Regulatory Impact Analysis (regulatory analysis or RIA) in support of the NPRM on Safety Performance Measures for the Highway Safety Improvement Program. The regulatory analysis analyzes the economic impact, in terms of costs and benefits, on Federal, State, and local governments, as well as private entities regulated under this action, as required by EO 12866 and EO 13563. The estimated costs are measured on an incremental basis, relative to current safety performance reporting practices.

This section of the NPRM identifies the estimated costs resulting from the proposed rule—and how many serious injuries and fatalities would need to be avoided to justify this rule—in order to inform policy makers and the public of the relative value of the current proposal. The complete RIA may be accessed from the rulemaking's docket (FHWA–2013–0020). Each of the three performance measure rulemakings will include a discussion on the costs and benefits resulting from the proposed rules contained in each respective rulemaking; however, the third performance measure rule will provide a comprehensive discussion on the costs and benefits associated with all three performance measure rules for informational purposes.

The cornerstone of MAP–21's highway program transformation is the transition to a performance-based program. In accordance with the law, State DOTs will invest resources in projects to achieve performance targets that will make progress toward national goals. Safety is one goal area where MAP–21 establishes national performance goals for Federal-aid highway programs. The law requires State DOTs to achieve a significant reduction in traffic fatalities and serious injuries on all public roads. The MAP–21 requires the FHWA to promulgate a rule to establish safety performance measures.

Estimated Cost of the Proposed Rule

To estimate costs of the proposed rule, the FHWA assessed the level of effort, expressed in labor hours and the labor categories, needed to comply with each component of the proposed rule. Level of effort by labor category is monetized with loaded wage rates to estimate total costs. Table 1 displays the total cost of the proposed rule for the 10-year study period (2015–2024). Total costs are estimated to be $66.7 million undiscounted, $53.9 million discounted at 7 percent, and $60.5 million discounted at 3 percent. Costs associated with the establishment of performance targets make up 53 percent of the total costs of the proposed rule. The costs in the tables assume a portion of MPOs, approximately half, would establish their own targets and a portion would adopt State DOT targets. It is assumed that State DOTs and MPOs serving populations greater than 200,000 would use staff to analyze safety trends and establish performance targets on an annual basis and MPOs serving a population less than 200,000 would adopt State DOT targets rather than establish their own safety performance targets and would therefore not incur any incremental costs. The FHWA made this assumption because larger MPOs may have more resources available to develop performance targets. The FHWA believes that this is a conservative estimate as larger MPOs may elect not to set their own targets for any variety of reasons, including resource availability.

In addition, costs associated with the training of law enforcement personnel make up 36 percent of the total costs of the proposed rule. This is estimated to be a one-time incremental cost occurring in 2016 impacting law enforcement agencies ($58,490 per State law enforcement agency, $1,207 per local law enforcement agency, and $1,697 per sheriff's department incurred in 2016 only). These amounts represents less than 3 percent of the unloaded mean wage of a local government law enforcement officer ($57,670 in May 2012); further, law enforcement officers represent about 10 percent of all local government employees.[41]

TABLE 1—TOTAL ESTIMATED COST OF THE PROPOSED RULE

Cost components	10-yr total cost		
	Undiscounted	7%	3%
Cost of Section 490.205**	$26,336,977	$24,657,655	$25,589,318
KABCO Compliance	348,983	348,983	348,983
Minor Revisions to Database	*287,758*	*287,758*	*287,758*
Convert non-KABCO data	*61,225*	*61,225*	*61,225*
MMUCC Compliance	25,669,624	23,990,303	24,921,965
Modifications to Database Platform	*624,495*	*583,640*	*606,306*
Modifications to PAR Report	*1,070,213*	*1,000,199*	*1,039,042*
Law Enforcement Training	*23,974,916*	*22,406,464*	*23,276,617*
Establish 5-Year Rolling Average	318,370	318,370	318,370
Cost of Section 490.209	35,278,769	25,538,819	30,520,482
Establish and Update Performance Targets	35,278,769	25,538,819	30,520,482
Cost of Section 490.211	5,079,514	3,677,135	4,394,406
Develop an Implementation Plan	5,079,514	3,677,135	4,394,406
Total Cost of Proposed Rule	66,695,260	53,873,609	60,504,205

*Totals may not sum due to rounding.
**Costs of Section 490.205 Represent one-time start up costs.

[41] BLS data for local governments (May 2012), *http://www.bls.gov/oes/current/naics4_999300.htm#33-0000.*

Break-Even Analysis

Currently, there are many disparities in the way State DOTs code and define safety performance measures (e.g., serious injuries). The definitions and terminology (i.e. "incapacitating injury" vs. "severe injury") that States use can differ greatly. Below are the terminology and definitions that two different States use to code their most serious injury:

- "Incapacitating Injury": This means that the victim must be carried or otherwise helped from the scene. If the victim needs no help, then either a code 3 or 4 applies even though medical assistance may have been administered at the scene.
- "Severe Injury": An injury other than a fatal injury which results in broken bones, dislocated or distorted limbs, severe lacerations, or unconsciousness at or when taken from the collision scene. It does not include minor laceration.

These discrepancies have long been recognized as a problem in collecting and analyzing data at the national level. The proposed rulemaking would establish a single terminology and definition for the performance measures for the purpose of carrying out the HSIP to assess serious injuries and fatalities on all public roads. In addition, the rule would establish the processes that (1) State DOTs and MPOs would use to establish and report safety targets and (2) FHWA would use to assess progress that State DOTs have made toward achieving safety targets. Upon implementation, the FHWA expects that the proposed rule would result in some significant benefits. Specifically, the FHWA expects safety investment decision making to be more informed through the use of consistent and uniform measures, State DOTs to be more accountable to the public for the use of Federal funds to achieve their targets for performance and to reduce fatalities and serious injuries on all public roadways, in the HSIP, and for progress to be made toward the overall achievement of the MAP–21 national goal for safety. Each of these benefits is discussed in further detail in the Regulatory Impact Analysis, which we have placed in the docket. Although these improvements may lead to more effective policies, it is not appropriate to assume that any reductions in fatalities and serious injuries (post-rule implementation) are solely a result of this rule. Decisions regarding use of highway funding are the result of a multitude of factors (e.g. politics, project priorities, or other studies). In addition, these benefits are amorphous and difficult to quantify. Therefore, for this proposed rulemaking, the FHWA performed a break-even analysis as described in Office of Management and Budget (OMB) Circular A–4 that estimates the number of fatalities and incapacitating injuries the rule would need to prevent for the benefits of the rule to justify the costs. Table 2 displays the results from a break-even analysis using fatalities and incapacitating injuries as the reduction metric. The results show that the proposed rule must prevent approximately 7 fatalities or an equivalent 153 incapacitating injuries, nationwide, over 10 years to generate enough benefits to outweigh the cost of the proposed rule. This translates to approximately 1 avoided fatality or an equivalent 15.3 incapacitating injuries per year nationwide.[42] The FHWA believes that the requirements proposed in this rule would result in the achievement of this break-even threshold based on the actual performance improvements realized after the implementation of strategic highway safety plans which were first required to be developed as part of the previous surface transportation authorization. The FHWA further believes that the proposed requirements in this rule build on the plan requirements and, as a result, the benefits of the rule would be realized such that they outweigh the costs.

TABLE 2—BREAK-EVEN ANALYSIS USING FATALITIES AND INCAPACITATING INJURIES REDUCTION METRIC

Undiscounted 10-year costs	Reduction in fatalities required for rule to be cost-beneficial	Average annual reduction in fatalities required for rule to be cost-beneficial	Reduction in incapacitating injuries required for rule to be cost-beneficial	Average annual reduction in incapacitating injuries required for rule to be cost-beneficial
a	b = a ÷ $9,100,000	c = b ÷ 10 years	d = a ÷ $435,208	e = d ÷ 10 years
$66,695,260	7.3	0.7	153.2	15.3

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this NPRM on small entities and anticipates that this action would not have a significant economic impact on a substantial number of small entities. The proposed rule affects three types of entities: State governments, MPOs, and local law enforcement agencies. State governments do not meet the definition of a small entity.

The MPOs are considered governmental jurisdictions, so the small entity standard for these entities is whether the affected MPOs serve less than 50,000 people. As discussed in the RIA, the proposed rule is expected to impose costs on MPOs that serve populations exceeding 200,000. Further, MPOs serve urbanized areas with populations of more than 50,000. Therefore, the MPOs that incur economic impacts under this proposed rule do not meet the definition of a small entity.

Local law enforcement agencies, however, may be subsets of small governmental jurisdictions. Nonetheless, the RIA estimates minimal one-time costs to local law enforcement agencies, as discussed above, and these costs represent a fraction of a percent of revenues of a small government. Therefore, I hereby certify that this regulatory action would not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FHWA has determined that this NPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not contain a Federal mandate that may result in expenditures of $143.1 million or more in any one year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. The FHWA will publish a final analysis, including its

[42] For reference, according to "NHTSA Traffic Safety Facts 2009," there were 250,808 severe crashes in 2009.

response to public comments, when it publishes a final rule. Additionally, the definition of "Federal mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this NPRM in accordance with the principles and criteria contained in EO 13132. The FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing EO 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. This EO applies because State and local governments would be directly affected by the proposed regulation, which is a condition on Federal highway funding. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the OMB prior to conducing or sponsoring a collection of information. Details and burdens in this proposed rule would be realized in Planning and HSIP reporting. The PRA activities are already covered by existing OMB Clearances. The reference numbers for those clearances are OMB: 2132–0529 and 2125–0025 with expiration dates of May 20, 2016. Any increase in PRA burdens caused by MAP–21 in these areas were addressed in PRA approval requests associated with those rulemakings.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), and has determined that this action would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under EO 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under EO 12630.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

We have analyzed this rule under EO 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under EO 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to States for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

The EO 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this rule does not raise any environmental justice issues.

Regulation Identification Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 490

Bridges, Highway safety, Highways and roads, Reporting and record keeping requirements.

Issued on: February 28, 2014.

Gregory G. Nadeau,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, by adding part 490 to read as follows:

PART 490—NATIONAL PERFORMANCE MANAGEMENT MEASURES

Subpart A—General Information

Sec.

Subpart B—National Performance Measures for the Highway Safety Improvement Program

Authority: 23 U.S.C. 134, 135, 148(i) and 150; 49 CFR 1.85.

Subpart A—General Information

§ 490.101 Definitions.

Unless otherwise specified, the following definitions apply to this part: *Highway Performance Monitoring System* (HPMS) is a national level highway information system that includes data on the extent, condition, performance, use, and operating characteristics of the Nation's highways.

Measure means an expression based on a metric that is used to establish targets and to assess progress toward achieving the established targets (e.g., a measure for flight on-time performance is percent of flights that arrive on time, and a corresponding metric is an arithmetic difference between scheduled and actual arrival time for each flight).

Metric means a quantifiable indicator of performance or condition.

Non-Urbanized Area means any geographic area that is not an "urbanized area" under either 23 U.S.C. 101(a)(34) or 23 CFR 450.104.

Target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by FHWA.

Subpart B—National Performance Measures for the Highway Safety Improvement Program

§ 490.201 Purpose.

The purpose of this subpart is to implement the requirements of 23 U.S.C. 150(c)(4), which requires the Secretary of Transportation to establish performance measures for the purpose of carrying out the Highway Safety Improvement Program (HSIP) and for State Departments of Transportation to use in assessing:

(a) Serious injuries and fatalities per vehicle miles traveled; and

(b) The number of serious injuries and fatalities.

§ 490.203 Applicability.

The performance measures are applicable to all public roads covered by the HSIP carried out under 23 U.S.C. 130 and 148.

§ 490.205 Definitions.

Unless otherwise specified, the following definitions apply in this subpart:

5-year rolling average means the average of 5 individual, consecutive annual points of data (e.g. the 5-year rolling average of the annual fatality rate).

Fatality Analysis Reporting System (FARS) means the final FARS data and is a nationwide census providing public yearly data regarding all road user fatalities.

Historical trend line means a trend line, developed by FHWA from 10 years of data, used to plot a projection point for future numbers and rates of serious injuries and fatalities.

KABCO means the coding convention system for injury classification established by the National Safety Council.

Made significant progress means, in accordance with 23 U.S.C. 148(i), an outcome at or below the upper bound of a prediction interval.

Number of Fatalities means the total number of persons suffering fatal injuries in a motor vehicle traffic crash during a calendar year, based on the data reported by the Fatality Analysis Reporting System (FARS) database.

Number of Serious Injuries means the total number of persons suffering at least one serious injury for each separate motor vehicle traffic crash during a calendar year, as reported by the State, where the injury status is MMUCC, latest edition, compliant. For serious injuries that are not MMUCC compliant, the number of serious injuries means serious injuries that are converted to KABCO by use of conversion tables developed by NHTSA.

Prediction Interval means an estimate of the upper and lower bounds within which a future observation will fall, given a specific probability.

Projection point means a future point based on historical trend line data.

Rate of Fatalities means the ratio of the total number of fatalities (as defined above) to the number of vehicle miles of travel (VMT) as reported by the Highway Performance Monitoring System (HPMS) (expressed in 100 million VMT) in a calendar year.

Rate of Serious Injuries means the ratio of the total number of serious injuries (as defined above) to the number of VMT as reported by the HPMS (expressed in 100 million vehicle miles of travel) in a calendar year.

Serious Injuries means in the first 18 months of the effective date of this rule, injuries classified as "A" on the KABCO scale through use of the conversion tables developed by NHTSA; after 18 months of the effective date of this rule, "suspected serious injury" (A) as defined in the Model Minimum Uniform Crash Criteria (MMUCC), latest edition.

§ 490.207 National performance measures for The Highway Safety Improvement Program.

(a) There are four performance measures for the purpose of carrying out the Highway Safety Improvement Program (HSIP). They are:

(1) Number of fatalities;

(2) Rate of fatalities;

(3) Number of serious injuries; and

(4) Rate of serious injuries.

(b) Each performance measure is based on a 5-year rolling average. The performance measures are calculated as follows, rounding the total to the hundredth decimal place:

(1) The performance measure for the number of fatalities is the 5-year rolling average of the total number of fatalities for each State and shall be calculated by adding the number of fatalities for the most recent 5 consecutive years for which data are available and dividing by five.

(2) The performance measure for the rate of fatalities is the 5-year rolling average of the State's fatality rate per VMT and shall be calculated by first calculating the number of fatalities per 100 million VMT as reported in HPMS for the most recent 5 consecutive years for which data are available, adding the results, and dividing by five.

(3) The performance measure for the number of serious injuries is the 5-year rolling average of the total number of serious injuries for each State and shall be calculated by adding the number of serious injuries for the most recent 5 consecutive years for which data are available and dividing by five.

(4) The performance measure for the rate of serious injuries is the 5-year rolling average of the total number of serious injuries per VMT and shall be calculated by first calculating the number of serious injuries per 100 million VMT as reported in HPMS for each of the most recent 5 consecutive years for which data are available, adding the results, and divided by five.

(c) For purposes of calculating serious injuries performance measures in § 490.207(b)(3) and (4):

(1) By the effective date of this rule, serious injuries shall be coded (A) in the KABCO injury classification scale through use of the NHTSA serious injuries conversion tables.

(2) Within 18 months of the effective date of this rule, serious injuries must be determined using MMUCC, latest edition.

(d) FHWA recommends that States prepare themselves so that no later than January 1, 2020, all States use a medical record injury outcome reporting system that links injury outcomes from medical records to crash reports.

§ 490.209 Establishment of performance targets.

(a) State DOTs shall establish targets annually for each performance measure identified in § 490.207(a) in a manner that is consistent with the following:

(1) The State DOT targets shall be identical to the targets established by the State Highway Safety Office for common performance measures reported in the State's Highway Safety Plan, subject to the requirements of 23 U.S.C. 402(k)(4), and as coordinated through the State Strategic highway safety plan.

(2) State DOT targets shall represent performance outcomes anticipated for the calendar year following the HSIP annual report date, as provided in 23 CFR 924.15.

(3) State DOT performance targets shall represent the anticipated performance outcome for all public roadways within the State regardless of ownership or functional class.

(4) State DOT targets shall be reported in the HSIP annual report that is due after one year from the effective date of this rule and in each subsequent HSIP annual report thereafter.

(5) The State DOT shall include in the HSIP Report 10 years of serious injury data.

(i) The 10 years of data shall be the same years that final FARS data were available at the time the target was established.

(ii) The serious injury data shall be either MMUCC compliant or converted to the KABCO system (A) for injury classification through use of the NHTSA conversion tables.

(6) Unless approved by FHWA, State DOTs shall not change their target once it is submitted in the HSIP annual report.

(b) State DOTs may, as appropriate, establish one additional performance target for all urbanized areas and one additional performance target for all non-urbanized areas within the State for each performance measure.

(c) The Metropolitan Planning Organizations (MPOs) shall establish performance targets for each of the measures identified in §. 490.207(a), where applicable, in a manner that is consistent with the following:

(1) The MPOs shall establish targets not later than 180 days after the respective State DOT establishes and reports targets in the State HSIP annual report.

(2) After the MPOs establish the targets, the State DOT must be able to provide those targets to FHWA, upon request.

(3) The MPO targets shall be established by either:

(i) Planning and programming safety projects so that they contribute toward the accomplishment of the State DOT targets, or

(ii) Committing to quantifiable targets.

(4) The MPO targets established under paragraph (c)(3) of this section specific to the metropolitan planning area shall represent the anticipated performance outcome for all public roadways within the metropolitan planning boundary regardless of ownership or functional class.

(d) The State DOT and relevant MPOs shall coordinate on the selection of targets in accordance with 23 CFR 450 to ensure consistency, to the maximum extent practicable.

§ 490.211 Determining whether a State DOT has made significant progress toward achieving performance targets.

(a) The determination for having made significant progress toward achieving the performance targets under 23 U.S.C. 148(i) will be determined based on final FARS data for the fatality number, final FARS and HPMS data for the fatality rate, State reported data for the serious injuries number, and State reported data and HPMS data for the serious injuries rate. The State-reported serious injury data will be taken from the HSIP report in accordance with 23 CFR 924.15.

(b) FHWA will evaluate whether a State DOT has achieved or made significant progress toward achievement of each performance target.

(1) Only those performance targets not achieved will be evaluated for having made significant progress.

(2) FHWA will evaluate whether a State DOT has made significant progress toward achieving a target by:

(i) Determining a historical trend line, based on 5-year rolling averages, using 10 consecutive years of the most recent FARS, HPMS, and the equivalent serious injury data available at the time the target is established.

(ii) Using that historical trend line, determining a projection point (which is also based on the rolling average) for the target year.

(iii) Determining from that projection point, a prediction interval bounded by a 70 percent upper and lower bound.

(iv) Determining if the outcome is at or below the 70 percent upper bound of the prediction interval.

(3) A State DOT is determined to have overall achieved its targets or made significant progress toward achieving its targets when at least 50 percent of the total number of performance targets is achieved or the State DOT has made significant progress as provided in paragraph (b)(2) of this section (e.g. if a State DOT has four performance targets, then the State DOT is determined to overall achieve its targets or made significant progress toward achieving its targets if it met one target and made significant progress on one target).

(c) If a State DOT has not overall achieved or made significant progress toward achieving safety performance targets in accordance with paragraph (b) of this section, the State DOT must comply with 23 U.S.C. 148(i).

(d) FHWA will evaluate whether a State DOT has overall achieved or made significant progress toward achievement of performance targets annually. The first evaluation will occur within 3 months of the date that final FARS data are available for the first year State DOTs set performance targets.

§ 490.213 Reporting of targets for the Highway Safety Improvement Program

(a) The targets established by the State DOT shall be reported to the FHWA in the State's HSIP annual report in accordance with 23 CFR part 924.

(b) The MPOs shall report their established safety targets to their respective State DOT in a manner that is agreed upon by both parties and documented in the Metropolitan Planning Agreement in accordance with 23 CFR part 450.

(c) The MPOs shall report baseline safety performance and progress toward the achievement of their targets in the system performance report in the metropolitan transportation plan in accordance with 23 CFR part 450.

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